

SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

WRITTEN COMMENTS ON
H.R. 1571
RECIPROCAL TRADE AND INVESTMENT ACT OF 1983
AND
H.R. 2848
SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1983



NOVEMBER 4, 1983

Prepared for the use of the Committee on Ways and Means by its staff

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WRITTEN COMMENTS ON H.R. 1571, THE "RECIPROCAL TRADE AND INVESTMENT ACT OF 1983," AND H.R. 2848, THE "SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1983"

[Press release of Friday, Aug. 6, 1983]

The Honorable Sam M. Gibbons (D-Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade is inviting written comments on the bill, H.R. 1571, the "Reciprocal Trade and Investment Act of 1984," introduced by Congressman Jones of Oklahoma, Mr. Gibbons, Mr. Shannon, Mr. Downey of New York, Mr. Conable, Mr. Vander Jagt, and Mr. Schulze, and on H.R. 2848, the "Service Industries Commerce Development Act of 1983," which was reported by the Committee on Energy and Commerce and has been sequentially referred to the Committee on Ways and Means through September 30, 1983. Extensive hearings were held on similar bills (H.R. 6773, H.R. 5383, and H.R. 5579) in the last Congress. Consequently, written comments are invited at this time since further hearings may not be required on these issues incorporated in H.R. 1571 and H.R. 2848.

H.R. 1571 seeks to insure continued expansion of reciprocal market opportunities in trade in goods, trade in services, and investment for the United States. The bill provides for an analysis of policies and practices which constitute barriers to U.S. trade, as well as a study of factors affecting the competitiveness of U.S. high technology industries. It establishes the reduction and elimination of barriers to trade in services, foreign direct investment, and high technology as a primary negotiating objective of the United States, while giving the President greater ability to deal with unfair trading practices under section 301 of the Trade Act of 1974. Trade in services is also designated as an area of greater attention in U.S. trade policy through direction of the U.S. Trade Representative as coordinator of U.S. policies concerning trade in services and through authorization for the Secretary of Commerce to establish a service industries development program.

H.R. 2848 directs the Secretary of Commerce to establish a service industries development program which would analyze competitive conditions in international trade in services and the competitiveness of U.S. service industries. The bill calls for the Secretary to submit a report to the President and the Congress containing an analysis of regulations of both foreign and U.S. suppliers and the potential effect of such regulations on trade relationships and negotiations. This report would become the basis for action by the President to limit eligibility of foreign suppliers to engage in interstate commerce in the United States. Finally, authority to investigate

complaints regarding unfair actions by foreign suppliers is granted to the Secretary of Commerce.

Written comments (3 copies) should be submitted to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515, no later than the close of business, Tuesday, September 6, 1983.

[The texts of the bills follow:]

98TH CONGRESS
1ST SESSION

H. R. 1571

To insure the continued expansion of reciprocal market opportunities in trade, trade in services, and investment for the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1983

Mr. JONES of Oklahoma (for himself, Mr. GIBBONS, Mr. SHANNON, Mr. DOWNEY of New York, Mr. FRENZEL, Mr. CONABLE, Mr. VANDER JAOT, and Mr. SCHULZE) introduced the following bill; which was referred jointly to the Committees on Ways and Means, Foreign Affairs, and Energy and Commerce

A BILL

To insure the continued expansion of reciprocal market opportunities in trade, trade in services, and investment for the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; AMENDMENT OF TRADE ACT OF
4 1974.

5 (a) SHORT TITLE.—This Act may be cited as the “Re-
6 ciprocal Trade and Investment Act of 1983”.

7 (b) AMENDMENT OF TRADE ACT OF 1974.—Except as
8 otherwise expressly provided, whenever in this Act an

1 amendment or repeal is expressed in terms of an amendment
2 to, or repeal of, a section or other provision, the reference
3 shall be considered to be made to a section or other provision
4 of the Trade Act of 1974.

5 SEC. 2. STATEMENT OF PURPOSES.

6 The purposes of this Act are—

7 (1) to foster the economic growth of, and full em-
8 ployment in, the United States by achieving open, fair,
9 and equitable access to foreign markets for United
10 States exports;

11 (2) to improve the ability of the President—

12 (A) to identify and to analyze barriers to (and
13 restrictions on) United States trade and invest-
14 ment, and

15 (B) to achieve the elimination of such bar-
16 riers and restrictions; and

17 (3) to encourage further expansion of international
18 trade, including trade in services, and to enhance the
19 free flow of foreign direct investment with implications
20 for trade in goods and services, through the negotiation
21 of agreements (both bilateral and multilateral) which
22 reduce or eliminate barriers and other trade-distorting
23 measures.

1 SEC. 3. ANALYSES OF FOREIGN TRADE BARRIERS AND
2 UNITED STATES COMPETITIVENESS.

3 (a) REPORT ON TRADE BARRIERS.—Chapter 6 of title
4 I (19 U.S.C. 2111 et seq.) is amended by adding at the end
5 thereof the following new section:

6 "SEC. 164. REPORT CONCERNING BARRIERS TO UNITED
7 STATES EXPORTS.

8 "(a) Before the close of the 12-month period beginning
9 on the date of enactment of this section, the United States
10 Trade Representative (hereinafter in this section referred to
11 as the 'Trade Representative') shall submit a report to the
12 Committee on Ways and Means of the House of Representa-
13 tives and the Committee on Finance of the Senate on trade
14 barriers to United States exports. The report, which the
15 Trade Representative shall annually revise and update after
16 it is submitted in accordance with the preceding sentence,
17 shall contain—

18 "(1) a comprehensive inventory of acts, policies,
19 or practices, which constitute barriers to, or distortions
20 of, United States exports of goods or services, or of
21 foreign direct investment by United States persons
22 with implications for trade in goods or services, and
23 such inventory shall include, but not be limited to—

24 "(A) a description of each act, policy, or
25 practice and of its operation in the particular
26 country,

1 “(B) an identification of the goods, services,
2 or investment affected, and

3 “(C) the legal basis for such act, policy, or
4 practice in the particular country; and

5 “(2) a quantitative or qualitative assessment,
6 whichever is appropriate, of the principal acts, policies,
7 or practices identified in paragraph (1) that restrict
8 market access for competitive United States exports of
9 goods or services, or foreign direct investment with im-
10 plications for trade in goods or services, and such as-
11 sessment shall include, but not be limited to—

12 “(A) the extent to which each such act,
13 policy, or practice is subject to international
14 agreements to which the United States is a party,

15 “(B) information with respect to any action
16 taken to eliminate or to reduce each such act,
17 policy, or practice, including, but not limited to—

18 “(i) any action under section 301, or

19 “(ii) negotiations or consultations with
20 foreign governments, and

21 “(C) any applicable advice given through ap-
22 propriate committees established pursuant to sec-
23 tion 135.

24 “(b) The report and the revisions and updatings thereto
25 required under subsection (a) shall be developed and coordi-

1 nated by the Trade Representative through the interagency
2 trade organization established by section 242(a) of the Trade
3 Expansion Act of 1962.

4 “(c) The head of each department or agency of the ex-
5 ecutive branch of the Government, including any independent
6 agency—

7 “(1) shall furnish to the Trade Representative or
8 to the appropriate agency, upon request, such data, re-
9 ports, and other information as is necessary for the
10 Trade Representative to carry out his functions under
11 this section; and

12 “(2) may detail such personnel and may furnish
13 such services, with or without reimbursement, as the
14 Trade Representative may request to assist in carrying
15 out such functions.

16 “(d) Nothing in this section shall authorize the release of
17 information to, or the use of information by, the Trade Rep-
18 resentative in a manner inconsistent with law or any proce-
19 dure established pursuant thereto.”.

20 (b) REPORT ON COMPETITIVENESS.—Before the close
21 of the twelve-month period beginning on the date of enact-
22 ment of this Act, the United States Trade Representative
23 shall submit a report to Congress analyzing the factors not
24 addressed elsewhere in this Act, or the amendments made by
25 it, which significantly affect the competitiveness of United

1 States high technology industries that have a potential for
2 high sales growth in world markets, including—

3 (1) United States and foreign economic policies, in
4 particular, macroeconomic, regulatory, and sector or
5 factor specific policies, and

6 (2) the structure of markets which supply produc-
7 tion factors to, and distribute the product of, such in-
8 dustries.

9 (c) CONFORMING AMENDMENTS.—

10 (1) The section heading for section 163 is amend-
11 ed to read as follows:

12 "SEC. 163. REPORTS ON TRADE AGREEMENTS AND ADJUST-
13 MENT ASSISTANCE."

14 (2) The table of contents for chapter 6 of title I is
15 amended by striking out

"Sec. 163. Reports.";

16 and inserting in lieu thereof the following:

"Sec. 163. Reports on trade agreements and adjustment assistance.

"Sec. 164. Report concerning barriers to United States exports."

17 SEC. 4. AMENDMENTS TO TITLE III OF THE TRADE ACT OF
18 1974.

19 (a) PRESIDENTIAL DETERMINATIONS AND ACTION.—

20 Section 301 (19 U.S.C. 2411(a)) is amended—

21 (1) by striking out the last sentence of subsection

22 (a);

1 (2) by amending subsection (b)(2) by striking out
2 "products" and inserting in lieu thereof "goods";

3 (3) by redesignating subsections (c) and (d) as sub-
4 sections (e) and (f), respectively, and by adding immedi-
5 ately after subsection (b) the following new subsections:

6 "(c) CONDITIONS AND LIMITATIONS.—In implement-
7 ing this section, the President—

8 (1) may take action on a nondiscriminatory basis
9 or solely against the foreign country or instrumentality
10 involved;

11 (2) may take action without regard to whether or
12 not the action is related to the subject matter involved
13 in the act, policy, or practice identified under subsec-
14 tion (a);

15 "(3) shall take into account the obligations of the
16 United States under any applicable trade agreement;

17 "(4) shall take into account the impact of the
18 action taken on the national economy, including, but
19 not limited to, employment, inflation, industry rationali-
20 zation, and consumer costs;

21 "(5) shall conduct a review (on not less than a bi-
22 ennial basis) of each action taken by him under this
23 section in order to determine its effectiveness and
24 whether continuation of the action is in the national in-
25 terest; and

1 “(6) shall rescind an action taken under this sec-
2 tion within thrity days after the day on which—

3 “(A) the offending act, policy, or practice is
4 eliminated by the foreign country or instrumentali-
5 ty, or

6 “(B) a determination is made under para-
7 graph (5) that continuation of the action is not in
8 the national interest.

9 “(d) ACTIONS ON SERVICES.—

10 “(1) IN GENERAL.—With respect to actions on
11 the services of a foreign country under subsection (b),
12 the President may restrict, in the manner and to the
13 extent he deems appropriate, the terms and conditions,
14 or deny the issuance, of any license, permit, order or
15 other authorization, issued under the authority of Fed-
16 eral law, that allows a foreign supplier of services
17 access to the United States market in the service
18 sector concerned.

19 “(2) AFFECTED AUTHORIZATIONS.—Actions
20 under paragraph (1) shall apply only with respect to li-
21 censes, permits, orders, or other authorizations grant-
22 ed, or applications therefor pending, on or after the
23 date a petition is filed under section 302(a) or a deter-
24 mination to initiate is made by the United States Trade

1 Representative (hereinafter in this chapter referred to
2 as the 'Trade Representative') under section 302(c).

3 "(3) CONSULTATION.—Before the President takes
4 action under subsection (b) involving the imposition of
5 fees or other restrictions on the services of a foreign
6 country, the Trade Representative shall, if the services
7 involved are subject to regulation by any agency of the
8 Federal Government or of any State, consult with the
9 head of the agency concerned."; and

10 (4) by amending paragraph (1) of subsection (f) (as
11 redesignated by subsection (c)) to read as follows:

12 "(1) DEFINITIONS.—For purposes of this sec-
13 tion—

14 "(A) The term 'commerce' includes, but is
15 not limited to—

16 "(i) goods and services; and

17 "(ii) foreign direct investment by United
18 States persons with implications for trade in
19 goods or services.

20 "(B) The term 'services' includes services as-
21 sociated with international trade, whether or not
22 such services are related to trade in goods.

23 "(C) The term 'discriminatory' includes, if
24 appropriate, any act, policy, or practice which

1 denies national or most-favored-nation treatment
2 to United States goods, services, or investment.

3 “(D) The term ‘unjustifiable’ means any act,
4 policy, or practice which is in violation of, or in-
5 consistent with, the international legal rights of
6 the United States.”

7 (b) REVIEW OF PETITIONS; INITIATION OF INVESTI-
8 GATIONS BY TRADE REPRESENTATIVES.—Section 302 is
9 amended—

10 (1) by striking out the last sentence of subsection

11 (a);

12 (2) by redesignating subsection (b) as subsection

13 (c), and by amending paragraph (2) thereof—

14 (A) by striking out “the text” and inserting
15 in lieu thereof “a summary”, and

16 (B) by striking out “public hearing—” and
17 inserting in lieu thereof “public hearing (unless a
18 public hearing was held on the petition under sub-
19 section (b)(2)(B)).—”;

20 (3) by inserting after subsection (a) the following
21 new subsection:

22 “(b) REVIEW OF PETITIONS.—

23 “(1) PETITIONS NOT INVOLVING TRADE AGREE-
24 MENTS.—Not later than forty-five days after the date
25 on which he receives a petition under subsection (a)

1 that does not involve a trade agreement, the Trade
2 Representative shall determine whether to initiate an
3 investigation.

4 "(2) PETITIONS INVOLVING TRADE AGREE-
5 MENTS.—With respect to a petition received under
6 subsection (a) that involves a trade agreement, the
7 Trade Representative shall—

8 "(A) not later than fifteen days after the date
9 on which he receives the petition, review the peti-
10 tion for legal sufficiency; and

11 "(B) not later than seventy-five days after
12 such date of receipt (unless the petitioner agrees
13 to an extension of such seventy-five-day period),
14 and based on such factfinding, policy review, and
15 public hearings as he deems necessary, determine
16 whether to initiate an investigation."; and

17 (4) by adding at the end thereof the following new
18 subsection:

19 "(d) DETERMINATION TO INITIATE BY MOTION OF
20 TRADE REPRESENTATIVE.—If the Trade Representative
21 determines with respect to any matter than an investigation
22 should be initiated in order to advise the President concern-
23 ing the exercise of the President's authority under section
24 301, the Trade Representative shall publish such determina-
25 tion in the Federal Register and such determination shall be

1 treated as an affirmative determination under subsection
2 (c)(2). The Trade Representative shall, before making any
3 determination under this subsection, consult with appropriate
4 committees established pursuant to section 135.”.

5 (c) RECOMMENDATIONS BY THE TRADE REPRESENTA-
6 TIVE.—Section 304(a) (19 U.S.C. 2414(a)) is amended—

7 (1) by amending paragraph (1) to read as follows:

8 “(1) IN GENERAL.—On the basis of the investiga-
9 tion under section 302, and the consultations (and the
10 proceedings, if applicable) under section 303, and sub-
11 ject to subsection (b), the Trade Representative shall
12 recommend to the President what action, if any, he
13 should take under section 301 with respect to the mat-
14 ters subject to investigation. The Trade Representative
15 shall make that recommendation not later than—

16 “(A) nine months after the date of the initi-
17 ation of the investigation under section 302(c)(2),
18 if the petition does not involve a trade agreement;
19 or

20 “(B) eight months after the date of the initi-
21 ation of the investigation under section 302(c)(2)
22 (unless the petitioner agrees to an extension of
23 such eight-month period), if the petition involves a
24 trade agreement.”; and

1 (2) by inserting immediately after the side heading
2 for paragraph (2) the following new sentence: "Any
3 reference in this paragraph to another paragraph or
4 subparagraph shall be considered to be in reference to
5 a paragraph or subparagraph of this section as it was
6 in effect on the day before the date of the enactment of
7 the Reciprocal Trade and Investment Act of 1983.";
8 and

9 (3) by striking out "paragraph (1)(C)" in para-
10 graph (3) and inserting in lieu thereof "paragraph
11 (1)(B)".

12 (d) TREATMENT OF REQUESTED INFORMATION.—Sec-
13 tion 305 (19 U.S.C. 2415) is amended by adding at the end
14 thereof the following new subsection:

15 "(c) CERTAIN BUSINESS INFORMATION NOT MADE
16 AVAILABLE.—

17 "(1) IN GENERAL.—Except as provided in para-
18 graph (2), and notwithstanding any other provision of
19 law (including section 552 of title 5, United States
20 Code), no information requested and received by the
21 Trade Representative in aid of any investigation under
22 this chapter shall be made available to any person if—

23 "(A) the person providing such information
24 certifies that—

1 “(i) such information is business confi-
2 dential,

3 “(ii) the disclosure of such information
4 would endanger trade secrets or profitability,
5 and

6 “(iii) such information is not generally
7 available;

8 “(B) the Trade Representative determines
9 that such certification is well-founded; and

10 “(C) to the extent required in regulations
11 prescribed by the Trade Representative, the
12 person providing such information provides an
13 adequate nonconfidential summary of such infor-
14 mation.

15 “(2) USE OF INFORMATION.—The Trade Repre-
16 sentative may—

17 “(A) use information subject to paragraph
18 (1), or make such information available (in his
19 own discretion) to any employee of the Federal
20 Government for use, in any investigation under
21 this chapter; or

22 “(B) may make such information available to
23 any other person in a form which cannot be asso-
24 ciated with, or otherwise identify, the person pro-
25 viding the information.”.

1 (e) NOTICE AND REPORT OF EXTENSIONS.—Section
2 306 (16 U.S.C. 2416) is amended—

3 (1) by redesignating paragraphs (2) and (3) as
4 paragraphs (3) and (4), respectively;

5 (2) by inserting after paragraph (1) the following
6 new paragraph:

7 “(2) publish notice in the Federal Register of each
8 extension agreed to by a petitioner under section
9 302(b)(2)(B) or 304(a)(1)(B);” and

10 (3) by inserting before “, and the actions taken”
11 in paragraph (4) (as so redesignated) the following: “,
12 each extension, and the reasons therefor, for which
13 notice is required to be published under paragraph
14 (2),”.

15 (f) CONFORMING AMENDMENTS.—

16 (1) Section 141(d) is amended—

17 (A) by striking out “and” at the end of para-
18 graph (6),

19 (B) by striking out the period at the end of
20 paragraph (7) and inserting in lieu thereof a semi-
21 colon and “and”, and

22 (C) by adding at the end thereof the follow-
23 ing new paragraph:

24 “(8) provide, where authorized by law, copies of
25 documents to persons at cost, except that any funds so

1 received shall be credited to, and be available for use
2 from, the account from which expenditures relating
3 thereto were made.”.

4 (2) Section 301(e) (as redesignated by subsection
5 (c)) is amended—

6 (A) by striking out the side heading and in-
7 serting in lieu thereof “OTHER ACTIONS.—”; and

8 (B) by striking out “with respect to a peti-
9 tion”.

10 (3) Section 303 (19 U.S.C. 2413) is amended—

11 (A) by striking out “302(b)” and inserting in
12 lieu thereof “302(c)”;

13 (B) by striking out “with respect to a peti-
14 tion”;

15 (C) by inserting “or the determination of the
16 Trade Representative under section 302(d)” after
17 “in the petition”; and

18 (D) by inserting “(if any)” after “petitioner”.

19 (4) Section 304(b) (19 U.S.C. 2414(b)) is amended
20 by striking out “302” and inserting “302(a) or a deter-
21 mination to initiate under section 302(d)”.

22 **SEC. 5. NEGOTIATING OBJECTIVES.**

23 (a) **CONGRESSIONAL MANDATE.**—It is the sense of the
24 Congress that the United States should seek—

1 (1) negotiations or consultation with foreign gov-
2 ernments to reduce or to eliminate acts, policies, or
3 practices which deny fair and equitable access to for-
4 eign markets for United States goods or services or
5 which otherwise burden or restrict United States com-
6 merce; and

7 (2) agreement of the contracting parties to the
8 General Agreement on Tariffs and Trade (GATT)—

9 (A) to review the adequacy of the agree-
10 ments, including dispute settlement provisions,
11 concluded in the Tokyo round of multilateral trade
12 negotiations, with a view to expanding and
13 strengthening their disciplines and coverage and
14 ensuring their full implementation,

15 (B) to complete the negotiation of agree-
16 ments not concluded in the multilateral trade ne-
17 gotiations, and

18 (C) to conduct a meaningful work program of
19 identification and analysis of conditions of trade,
20 including but not limited to, restrictions on trade
21 in services, restrictions on foreign direct invest-
22 ment with implications for trade in goods or serv-
23 ices, and barriers to trade in high technology
24 products, not presently or adequately covered by

1 GATT articles, with a view to developing agree-
2 ments to revise, extend, or supplement such rules.

3 (b) CONGRESSIONAL CONSULTATION.—The United
4 States Trade Representative shall keep the Committee on
5 Ways and Means of the House of Representatives and the
6 Committee on Finance of the Senate currently informed with
7 respect to trade policy priorities for the purposes of expand-
8 ing market opportunities and other matters referred to in sub-
9 section (a).

10 (c) NEGOTIATING OBJECTIVES.—

11 (1) IN GENERAL.—Chapter 1 of title I is amended
12 by inserting immediately after section 104 of the fol-
13 lowing new section:

14 "SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO
15 TRADE IN SERVICES, FOREIGN DIRECT INVEST-
16 MENT, AND HIGH TECHNOLOGY PRODUCTS.

17 "(a) TRADE IN SERVICES.—Principal United States ne-
18 gotiating objectives under section 102 with respect to trade
19 in services shall be—

20 "(1) to reduce or to eliminate barriers to, or other
21 distortions of, international trade in services including,
22 but not limited to—

23 "(A) barriers that deny national treatment,
24 and

1 “(B) restrictions on the operation of enter-
2 prises in foreign markets, including—

3 “(i) direct or indirect restrictions on the
4 transfer of information into, or out of, the
5 country or instrumentality concerned, and

6 “(ii) restrictions on the use of data proc-
7 essing facilities within or outside of such
8 country or instrumentality; and

9 “(2) to develop internationally agreed rules, in-
10 cluding dispute settlement procedures, which will
11 reduce or eliminate such barriers or distortions and
12 help insure open international trade in services.

13 “(b) FOREIGN DIRECT INVESTMENT.—Principal
14 United States negotiating objectives under section 102 with
15 respect to foreign direct investment with implications for
16 trade in goods or services shall be—

17 “(1) to reduce or to eliminate barriers to such for-
18 eign direct investment, to expand the principal of na-
19 tional treatment, and to reduce or to eliminate trade-
20 related barriers to establishment in foreign markets, in-
21 cluding establishment of services; and

22 “(2) to develop internationally agreed rules, in-
23 cluding dispute settlement procedures, which

24 “(A) will help insure a free flow of such for-
25 eign direct investment, and

1 “(B) will reduce or eliminate the trade dis-
 2 tortive effects of certain investment related meas-
 3 ures.

4 “(c) HIGH TECHNOLOGY PRODUCTS.—Principal United
 5 States negotiating objectives under section 102 with respect
 6 to high technology products shall be—

7 “(1) to obtain and preserve the maximum open-
 8 ness with respect to international trade and investment
 9 in high technology products and related services;

10 “(2) to reduce or to eliminate all barriers to, and
 11 the trade-distorting effects of, foreign government acts,
 12 policies, or practices on, United States exports of high
 13 technology products and related services, or if such re-
 14 duction or elimination is not achievable, to obtain com-
 15 pensation for such effects, with particular consideration
 16 given to the nature and extent of foreign government
 17 intervention affecting United States exports of high
 18 technology products or investments in high technology
 19 industries including—

20 “(A) foreign industrial policies which distort
 21 international trade or investment;

22 “(B) measures which deny national treatment
 23 or otherwise discriminate in favor of domestic
 24 high technology industries; and

1 “(C) measures which facilitate or encourage
2 anticompetitive market practices or structures;

3 “(3) to obtain commitments that foreign countries
4 or instrumentalities will not discourage government or
5 private procurement of foreign high technology prod-
6 ucts and related services;

7 “(4) to obtain commitments to—

8 “(A) foster the pursuit of joint scientific co-
9 operation between companies, institutions or gov-
10 ernmental entities of the United States and those
11 of the trading partners of the United States in
12 areas of mutual interest through such measures as
13 financial participation and technical and personnel
14 exchanges, and

15 “(B) insure that access by all participants to
16 the results of any such cooperative efforts should
17 not be impaired; and

18 “(5) to provide effective safeguards for the acqui-
19 sition and enforcement of intellectual property rights
20 and the property value of proprietary data.”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) The table of contents for chapter 1 of
23 title I is amended by inserting after the item re-
24 lating to section 104 the following new item:

 “Sec. 104A. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products.”.

1 (B) Paragraph (3) of section 102(g) (19
2 U.S.C. 2112(g)(3)) is amended to read as follows:

3 “(3) The term ‘international trade’ includes—

4 “(A) trade in both goods and services, and

5 “(B) foreign direct investment by United
6 States persons with implications for trade in goods
7 or services.”.

8 SEC. 6. PROVISIONS RELATING TO INTERNATIONAL TRADE IN
9 SERVICES.

10 (a) COORDINATION OF UNITED STATES POLICIES.—

11 (1) IN GENERAL.—The United States Trade Rep-
12 resentative, through the interagency trade organization
13 established pursuant to section 242(a) of the Trade Ex-
14 pansion Act of 1962 or any subcommittee thereof,
15 shall, in conformance with other provisions of law, de-
16 velop (and coordinate the implementation of) United
17 States policies concerning trade in services.

18 (2) FEDERAL AGENCIES.—In order to encourage
19 effective development, coordination, and implementa-
20 tion of United States policies on trade in services—

21 (A) each department or agency of the United
22 States responsible for the regulation of any serv-
23 ice sector industry shall, as appropriate, advise
24 and work with the United States Trade Repre-
25 sentative concerning matters that have come to

1 the department's or agency's attention with re-
2 spect to—

3 (i) the treatment afforded United States
4 service sector interest in foreign markets, or

5 (ii) allegations of unfair practices by for-
6 eign governments or companies in a service
7 sector; and

8 (iii) the Department of Commerce, to-
9 gether with other appropriate agencies shall
10 provide staff support for negotiations on
11 service-related issues by the United States
12 Trade Representatives and the domestic im-
13 plementation of service-related agreements.

14 (3) NO EFFECT ON EXISTING AUTHORITIES.—
15 Nothing in this section shall be construed to affect in
16 any manner or to any extent any existing authority or
17 responsibility with respect to any specific service
18 sector.

19 (b) SERVICE INDUSTRIES DEVELOPMENT PROGRAM.—

20 (1) IN GENERAL.—The Secretary of Commerce
21 shall establish a service industries development pro-
22 gram designed to—

23 (A) promote the competitiveness of United
24 States service firms and American employees
25 through appropriate economic policies; and

1 (B) promote actively the use and sale of
2 United States services abroad and develop trade
3 opportunities for United States service firms.

4 (2) PROGRAM ELEMENTS.—Such program shall—

5 (A) develop a data base for assessing the
6 adequacy of current, and for developing future
7 Government policies and activities pertaining to
8 services, including, but not limited to, export and
9 import data on individual service industries;

10 (B) collect and analyze, in consultation with
11 appropriate agencies, information pertaining to the
12 international operations and competitiveness of
13 United States service industries, including infor-
14 mation with respect to—

15 (i) United States regulation of service
16 industries,

17 (ii) tax treatment of services, with par-
18 ticular emphasis on the effect of United
19 States taxation on the international competi-
20 tiveness of United States firms and exports,

21 (iii) treatment of services in internation-
22 al agreements of the United States, and

23 (iv) adequacy of current United States
24 policies and activities in the service sector;

1 (C) conduct studies of individual domestic
2 service industries;

3 (D) collect comparative international infor-
4 mation on service industries and policies of foreign
5 governments toward services;

6 (E) conduct a program of research and anal-
7 ysis of service-related issues and problems, includ-
8 ing forecasts and industrial strategies; and

9 (F) develop policies to strengthen the export
10 competitiveness of domestic service industries.

11 (3) AVAILABILITY OF FUNDS.—The Secretary of
12 Commerce shall carry out the program under this sub-
13 section from funds otherwise made available to him
14 which may be used for such purposes.

15 (c) COORDINATION WITH STATES.—

16 (1) STATEMENT OF POLICY.—It is the policy of
17 Congress that the President shall, as he deems appro-
18 priate—

19 (A) consult with State governments on issues
20 of trade policy, including negotiating objectives
21 and implementation of trade agreements, affecting
22 the regulatory authority of non-Federal govern-
23 ments, or their procurement of goods and serv-
24 ices;

1 (B) establish one or more intergovernmental
2 policy advisory committees on trade which shall
3 serve as a principal forum in which State and
4 local governments may consult with the Federal
5 Government with respect to the matters described
6 in subparagraph (A); and

7 (C) provide to State and local governments
8 and to service industries, upon their request,
9 advice, assistance, and (except as may be other-
10 wise prohibited by law) data, analyses, and infor-
11 mation concerning United States policies on inter-
12 national trade in services.

13 (2) ESTABLISHMENT OF NON-FEDERAL GOVERN-
14 MENTAL TRADE ADVISORY COMMITTEES.—Section
15 135 (19 U.S.C. 2155) is amended—

16 (A) by inserting “and the non-Federal gov-
17 ernmental sector” after “private sector” in sub-
18 section (a),

19 (B) by adding at the end of subsection (c) the
20 following new paragraph:

21 “(3) The President—

22 “(A) may establish policy advisory commit-
23 tees representing non-Federal governmental inter-
24 ests to provide, where the President finds it nec-
25 essary, policy advice—

1 “(i) on matters referred to in subsection
2 (a), and

3 “(ii) with respect to implementation of
4 trade agreements, and

5 “(B) shall include as members of committees
6 established under paragraph (1) representatives of
7 non-Federal governmental interests where he
8 finds such inclusion appropriate after consultation
9 by the Trade Representative with such repre-
10 sentatives.”;

11 (C) by inserting “or non-Federal govern-
12 ment” after “private” each place it appears in
13 subsections (g) and (j);

14 (D) by inserting “government,” before
15 “labor” in subsection (j); and

16 (E) by adding at the end thereof the follow-
17 ing new subsection:

18 “(m) NON-FEDERAL GOVERNMENT DEFINED.—The
19 term ‘non-Federal government’ means—

20 “(1) any State, territory, or possession of the
21 United States, or the District of Columbia, or any po-
22 litical subdivision thereof, or

23 “(2) any agency or instrumentality of any entity
24 described in paragraph (1).”; and

1 (F) by inserting "or Public" after "Private"
2 in the heading thereof.

3 (3) CONFORMING AMENDMENTS.—

4 (A) Section 104(c) (19 U.S.C. 2114(c)) is
5 amended by inserting "or non-Federal govern-
6 mental" after "private".

7 (B) Sections 303 (19 U.S.C. 2413) and
8 304(b)(2) (19 U.S.C. 2414(b)(2)) are each amend-
9 ed by striking out "private sector".

10 (C) The table of sections for chapter 3 of
11 title I is amended by inserting "and public" after
12 "private" in the item relating to section 135.

COMMITTEE ON WAYS AND MEANS
LEGISLATIVE FILE

1

98TH CONGRESS
1ST SESSION

H. R. 2848

[Report No. 98-203, Part I]

To establish a service industries development program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1983

Mr. FLORIO (for himself, Mr. DINGELL, Mr. LENT, Ms. MIKULSKI, Mr. RICHARDSON, and Mr. TAUZIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

MAY 16, 1983

Reported with amendments, referred to the Committee on Foreign Affairs and to the Committee on Ways and Means for a period ending not later than September 30, 1983, for consideration of such provisions of the bill and amendment as fall within the jurisdictions of those committees pursuant to clause 1(i) and 1(v), rule X, respectively, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To establish a service industries development program, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Service Industries Com-
- 4 merce Development Act of 1983".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term “barriers to, or other distortions of, international trade in service” includes—

(A) barriers to the right of establishment in foreign markets; and

(B) restrictions on the operation of enterprises in foreign markets, including direct or indirect restrictions on the transfer of the information into, or out of, the country or instrumentality concerned and restrictions on the use of data processing facilities within or outside of such country or instrumentality.

(2) The term “foreign supplier” means a supplier whose corporate headquarters is located in a foreign country, and includes all subsidiaries and affiliates of such a supplier.

(3) The term “Secretary” means the Secretary of Commerce.

(4) The term “services” means economic outputs which are not tangible goods or structures, including, but not limited to, transportation, communications, retail and wholesale trade, advertising, construction, design and engineering, utilities, insurance, real estate, professional services, entertainment, and tourism, and

1 overseas investments which are necessary for the
2 export and sale of such services.

3 (5) The term "supplier" means any person who is
4 engaged in the business of providing services for ulti-
5 mate sale in the United States and includes as one
6 entity all persons who control, are controlled by, or are
7 in common control with, such person. Such term also
8 includes any predecessor or successor of such a
9 supplier.

10 SERVICE INDUSTRIES DEVELOPMENT PROGRAM AND

11 REPORTS

12 SEC. 3. (a)(1) The Secretary shall establish in the De-
13 partment of Commerce a service industries development pro-
14 gram designed to—

15 (A) develop policies regarding services that are
16 designed to increase the international competitiveness
17 of United States service industries in interstate and for-
18 eign commerce;

19 (B) on an annual basis, collect and analyze infor-
20 mation regarding purchases by domestic entities of
21 services from foreign suppliers;

22 (C) develop a data base for assessing the adequa-
23 cy of current, as well as for developing future, United
24 States policies and actions pertaining to services, in-
25 cluding, but not limited to, the collection and analysis

1 of data on an annual basis concerning sales by United
2 States service industries and their affiliates to custom-
3 ers in foreign countries;

4 (D) provide statistical, analytical, and policy infor-
5 mation to State and local governments and United
6 States service industries;

7 (E) collect and analyze information pertaining to
8 the international operations and competitiveness of
9 United States service industries, including information
10 with respect to—

11 (i) activities and policies of foreign govern-
12 ments toward foreign and United States service
13 industries,

14 (ii) United States regulation of service indus-
15 tries, and

16 (iii) the adequacy of current United States
17 policies and activities to strengthen the competi-
18 tiveness of United States service industries in in-
19 terstate and foreign commerce; and

20 (F) conduct studies of United States service indus-
21 tries, including assessments of their present and future
22 ability to compete in interstate and foreign commerce.

23 (2)(A) The Secretary shall seek to establish arrange-
24 ments with the private sector regarding the access by the

1 Secretary to private sector information that is necessary for
2 the Secretary to carry out his functions under subsection (a).

3 (B) The Secretary may request persons to submit to him
4 any information referred to in subparagraph (A) that the Sec-
5 retary considers to be critical for the carrying out of such
6 functions.

7 (C) All information to which the Secretary is given
8 access under subparagraph (A), is submitted to the Secretary
9 under subparagraph (B), or produced under subparagraph (D)
10 shall be confidential and shall not be disclosed; except (i) the
11 Secretary may disclose the information if the provider of the
12 information in writing waives confidentiality, or (ii) when re-
13 quired under court order. The Secretary shall, by regulation,
14 prescribe such procedures as may be necessary to preserve
15 such confidentiality, except that—

16 (i) the Secretary shall release upon request any
17 such information to the Congress or any committee
18 thereof; and

19 (ii) the Secretary may release or make public any
20 such information, excluding investment and income
21 data, in any aggregate or summary statistical form
22 which does not directly or indirectly disclose the
23 identity or business operations of the person who sub-
24 mitted the information.

1 (D)(i) The Secretary may issue subpoenas requiring the
2 production of any information requested by him for purposes
3 of carrying out paragraphs (1) (B) and (C). Such production of
4 information may be required from any place within the
5 United States.

6 (ii) If a person issued a subpoena under clause (i) refuses
7 to obey such subpoena or is guilty of contempt, any court of
8 the United States within the judicial district within which
9 such person is found or resides or transacts business may
10 (upon application by the Secretary) order such person to
11 appear before the Secretary to produce the information. Any
12 failure to obey such order of the court may be punished by
13 such court as a contempt thereof.

14 (iii) The subpoenas of the Secretary shall be served in the
15 manner provided for subpoenas issued by a United States dis-
16 trict court under the Federal Rules of Civil Procedure for the
17 United States district courts.

18 (iv) All process of any court to which application may be
19 made under this paragraph may be served in the judicial dis-
20 trict wherein the person required to be served resides or may
21 be found.

22 (E)(i) It is unlawful for any person to refuse willfully to
23 obey a request by the Secretary for information issued under
24 subparagraph (B).

1 (ii) Any person who is found by the Secretary, after
2 notice and an opportunity for a hearing in accordance with
3 section 554 of title 5, United States Code, to have violated
4 clause (i) shall be liable to the United States for a civil penal-
5 ty. The amount of the civil penalty shall not exceed \$10,000.
6 The amount of such civil penalty shall be assessed by the
7 Secretary, or his designee, by written notice.

8 (iii) Any person against whom a civil penalty is assessed
9 under clause (ii) may obtain review thereof in the appropriate
10 court of the United States by filing a notice of appeal in such
11 court within thirty days from the date of such order and by
12 simultaneously sending a copy of such notice by certified mail
13 to the Secretary. The Secretary shall promptly file in such
14 court a certified copy of the record upon which such violation
15 was found or such penalty imposed, as provided in section
16 2112 of title 28, United States Code. The findings and order
17 of the Secretary shall be set aside by such court if they are
18 not found to be supported by substantial evidence, as pro-
19 vided in section 706(2) of title 5, United States Code.

20 (iv) If any person fails to pay an assessment of a civil
21 penalty after it has become a final and unappealable order, or
22 after the appropriate court has entered final judgment in
23 favor of the Secretary, the Secretary shall refer the matter to
24 the Attorney General of the United States, who shall recover
25 the amount assessed in any appropriate district court of the

1 United States. In such action, the validity and appropriate-
2 ness of the final order imposing the civil penalty shall not be
3 subject to review.

4 (v) The Secretary may compromise, modify, or remit,
5 with or without conditions, any civil penalty which is subject
6 to imposition or which has been imposed under this subpara-
7 graph.

8 (3) Nothing in this section shall authorize the release of
9 information to, or the use of information by, the Secretary in
10 a manner inconsistent with law or any procedure established
11 pursuant thereto.

12 (b) The Secretary shall consult regularly with repre-
13 sentatives of State governments and representatives of
14 United States service industries concerning the development
15 and implementation of the policies on services referred to in
16 subsection (a)(1)(A) and other activities which are conducted
17 pursuant to subsections (a) and (c). The Secretary shall pro-
18 vide to State and local governments, upon their request,
19 advice, assistance, and (except as may be otherwise prohibit-
20 ed by law) information concerning United States policies on
21 ~~foreign commerce~~ as submitted to the Congress and the
22 ~~President not later than thirty days after the close of the~~
23 ~~period covered by the report containing—~~*foreign commerce*
24 *in services.*

1 (c) *On not less than a biennial basis commencing with*
2 *1985, the Secretary shall prepare a report (which shall be*
3 *submitted to the Congress and the President not later than*
4 *thirty days after the close of the period covered by the report)*
5 *containing—*

6 (1) an analysis of the activities during the period
7 covered by the report of foreign suppliers within the
8 various service industries in the United States market;

9 (2) an analysis of Federal, State, and local regula-
10 tions during such period of both foreign and United
11 States suppliers and the potential effect of such regula-
12 tion on trade relationships and negotiations;

13 (3) an analysis of the activities during such year
14 of United States suppliers of services in foreign coun-
15 tries, including the types of services provided, the
16 value of investment made in such services, and the
17 income resulting from their provision; and

18 (4) a study and an analysis of barriers to or other
19 distortions of international trade in services, including
20 the impact during such year of any act, policy, or prac-
21 tice of each designated major trading country that
22 limits the access of United States suppliers of services
23 to markets in that country in a manner that is unjusti-
24 fiable, unreasonable, or discriminatory.

25 For purposes of paragraph (4)—

1 (A) The term "designated major trading country"
2 means any major trading country which the Secretary,
3 after consultation with the Committee on Finance and
4 the Committee on Commerce, Science, and Transpor-
5 tation of the Senate and the Committee on Ways and
6 Means, the Committee on Energy and Commerce of
7 the House of Representatives, designates as a country
8 with respect to which the study and analysis under
9 such paragraph is necessary and appropriate.

10 (B) The term "major trading country" means
11 Canada, the European Economic Community, the indi-
12 vidual member countries of such community, Japan,
13 and any other foreign country or instrumentality desig-
14 nated by the Secretary for consideration for designation
15 under subparagraph (A).

16 PRESIDENTIAL AUTHORITY

17 SEC. 4. (a) Notwithstanding any other provision of law,
18 the President may impose, in accordance with subsections
19 (b), (c), (d), (e), and (f) of this section, such terms, conditions,
20 or limitations, as he deems appropriate, under which foreign
21 suppliers shall be eligible to engage in interstate commerce in
22 the United States.

23 (b) Within one hundred and twenty days after receiving
24 a report under section 3(c), the President shall—

1 (1) review all acts, policies, and practices dis-
2 cussed in the report as required under paragraph (4) of
3 such section;

4 (2) determine whether limitations should be im-
5 posed under subsection (a); and

6 (3) publish notice in the Federal Register—

7 (A) of each determination made under para-
8 graph (2) together with a description of the limita-
9 tions which the President proposes to implement
10 under subsection (a) as a result of that determina-
11 tion, and

12 (B) that written comment of interested per-
13 sons regarding such determination and the pro-
14 posed limitations may be submitted to the Secre-
15 tary during the one hundred and fifty-day period
16 beginning on the date of publication of the notice.

17 (c) The President may not impose any limitation under
18 subsection (a) until he has taken into account all comments
19 that are timely submitted in accordance with subsection
20 (b)(3)(B) with respect to the determination and proposed limi-
21 tations concerned.

22 (d)(1) Any interested person may file a petition with the
23 Secretary requesting the President to take action under sub-
24 section (a) and setting forth the allegations in support of the
25 request. The Secretary shall review the allegations in the

1 petition and, not later than forty-five days after the date on
2 which he received the petition, shall determine whether to
3 initiate an investigation.

4 (2) If the Secretary determines not to initiate an investi-
5 gation with respect to a petition, he shall inform the petition-
6 er of his reasons therefor and, within ten days after the date
7 on which the petitioner is so informed, shall publish notice of
8 the determination, together with a summary of such reasons,
9 in the Federal Register.

10 (3) If the Secretary determines to initiate an investiga-
11 tion with respect to a petition under paragraph (1), he shall
12 initiate an investigation regarding the issues raised. The Sec-
13 retary shall publish the text of the petition in the Federal
14 Register and shall, as soon as possible, provide opportunity
15 for the presentation of views concerning the issues, including
16 a public hearing within the thirty-day period after the date of
17 the determination or on a date after such period if agreed to
18 by the petitioner. The Secretary shall also consult with the
19 Federal agency having jurisdiction over the particular service
20 industry involved and the Congress.

21 (4) On the date an affirmative determination is made
22 under paragraph (3), the Secretary shall initiate consultations
23 with the foreign nation involved.

24 (e) On the basis of the investigation undertaken under
25 subsection (d)(3) and the consultation, if any, under subsec-

1 tion (d)(4), the Secretary shall recommend to the President
2 what action, if any, he should take under subsection (a) re-
3 garding the issues raised in the petition. The Secretary shall
4 make the recommendation not later than ninety days after
5 the date on which the Secretary determines to initiate the
6 investigation under subsection (d)(1).

7 (f)(1) If the President decides to take action on his own
8 motion under subsection (a) regarding a matter for which no
9 petition or resolution was received under subsection (d), the
10 President shall publish notice of his determination, including
11 the reasons for the determination in the Federal Register.
12 Unless he determines that expeditious action is required, the
13 President shall provide an opportunity for the presentation of
14 views concerning the taking of such action.

15 (2) Not later than twenty-one days after the date on
16 which he receives the recommendation of the Secretary
17 under subsection (e) with respect to a petition, the President
18 shall determine what action, if any, he will take under sub-
19 section (a), and shall publish notice of his determination, in-
20 cluding reasons for the determination, in the Federal
21 Register.

22 AUTHORIZATION OF APPROPRIATIONS

23 SEC. 5. *Beginning October 1, 1983, there* ~~There~~ are
24 authorized to be appropriated \$5,000,000 to carry out the
25 activities authorized by this Act.

STATEMENT OF LOREN SORENSON, VARIAN ASSOCIATES, ON BEHALF OF
THE AMERICAN ELECTRONICS ASSOCIATION

SUMMARY

Congress should enact legislation which will: (1) shore up the GATT system and assist the U.S. Trade Representative in reducing barriers abroad to U.S. exports of products, services, and foreign investment; (2) be consistent with the letter and spirit of the GATT system and U.S. obligations thereunder; (3) mandate and authorize the President to negotiate bilateral and multilateral treaties covering foreign direct investment and trade in services; (4) expand the authority of the President under section 301 of the Trade Act of 1974 to respond to foreign barriers to U.S. foreign direct investment; (5) call on the Trade Representative and the Secretary of Commerce to compile an inventory of foreign nontariff barriers to U.S. exports of products and services, and foreign direct investment; (6) require a periodic report to Congress by the Trade Representative and Secretary of Commerce on the steps planned or taken to have these foreign barriers reduced or eliminated; and (7) provide essential special attention on the high technology sector.

STATEMENT

Mr. Chairman and members of this distinguished committee, I am Loren Sorenson, manager of export services for Varian Associates based in Palo Alto, Calif. Varian manufactures microwave tubes, medical and industrial products, and semiconductor equipment. We have a vital interest in international trade and in U.S. policies which can affect that trade. I am submitting written testimony on behalf of the American Electronics Association, of whose International Committee I am chairman. AEA is a trade association of more than 2,300 electronics companies nationwide. Our membership encompasses all segments of the U.S. electronics industries, including manufacturers and suppliers of computers and peripherals, telecommunications equipment, defense systems and products, instruments, semiconductors and other components, software, research and office systems. AEA member companies employ over 2 million people and account for 63 percent of the worldwide sales of the U.S.-based electronics industries.

AEA member companies have a vital stake in exports and international trade. In some of the larger companies, half of their sales are to overseas customers. Electronics companies contribute a favorable balance of trade as a partial offset to an unfavorable balance incurred by oil and other imports. In 1981, electronic products produced a favorable trade balance of over \$5 billion, with electronic industrial products contributing a favorable balance in excess of \$10 billion.

AEA appreciates the leadership you and the members of the subcommittee have shown in focusing Congress attention and concern on the problems U.S. firms face abroad. We believe that this country must be forthright and aggressive in pursuing our trade and investment interests and rights. This, coupled with the enhancing tax measures you have passed, will go a long way toward insuring

the future competitiveness of U.S. electronics industries in world markets.

AEA believes that today we are at an important point of time for U.S. trade and investment policy. Great pressure is being placed on the GATT system of international trading rules because of what it does, and what it doesn't do. On the one hand protectionist forces, pointing to the visible effects of the current worldwide recession, are getting stronger both here in the United States and abroad. The political pressure is real to raise new tariff and nontariff barriers to product exports, and to reinforce existing ones. On the other hand, increased use of "industrial policies" is resulting in protectionist mechanisms that are not covered by the GATT rules, but which threaten to undo the significant progress made since GATT negotiations began in 1948.

OBJECTIVES OF TRADE LEGISLATION

AEA has assessed these domestic and foreign political pressures, and analyzed carefully several bills introduced by Congress. We believe now is the time for the United States to do all it can to resist protectionism here and overseas by working to shore up the GATT system and to expand the system of international rules to cover foreign investment and services. By initiating and passing appropriate legislation, Congress can address this dual threat to continued expansion of world markets by providing our negotiators the statutory backup and policy guidance they need to be successful in this critical endeavor. We think it is important that any legislation in this area:

- Be consistent with the letter and spirit of the GATT system and United States' obligations thereunder;

- Mandate and authorize the President to negotiate bilateral and multilateral treaties covering foreign direct investment and trade in services;

- Expand the authority of the President under section 301 of the Trade Act of 1974 to respond to foreign barriers to U.S. foreign direct investment;

- Call on the Trade Representative and the Secretary of Commerce to compile an inventory of foreign nontariff barriers to U.S. exports of products and services, and foreign direct investment;

- Require a periodic report to Congress by the Trade Representative and Secretary of Commerce on the steps planned or taken to have these foreign barriers reduced or eliminated; and

- Provide essential special attention on the high technology sector.

H.R. 1571, the "Reciprocal Trade and Investment Act of 1983", meets some of these objectives and principles. We urge this subcommittee to report out a bill whose provisions contain these elements. It will thereby assist our Trade Representative in reducing barriers abroad to U.S. products, services, and foreign investment; and by doing so it will alleviate the growing pressure in Congress to enact new protectionist and other GATT-inconsistent trade laws.

Let us now discuss our reasoning in light of some of the major difficulties our members increasingly face abroad.

HIGH TECHNOLOGY

If we examine our trade performance over the last two decades, it's clear that our R&D intensive, high technology industries are performing well in holding up the U.S. balance of trade. Our non-R&D intensive, less competitive industries are in trouble, some partly because of foreign industrial policies that have targeted these sectors for special attention.

The United States has a distinct comparative advantage in high technology manufactured products and related services. Unfortunately, nearly all countries, industrialized as well as the less developed countries, want to have their own high technology industries precisely because of the benefits the United States now reaps from them: new and better jobs, increased productivity, greater income, and the better standard of living which results. Consequently, many governments have targeted this sector for intervention via industrial policies, combining protectionism and active support.

Our industries require a worldwide market in order to support the increasingly expensive R&D and capital investments needed to stay in the forefront of technology and meet customer needs. The United States needs to be aggressive on efforts to keep these markets open to competition based on price and quality, other than on national origin. If the United States does not, we run the risk of losing the enormous benefits that our technologies can bring to the United States and to other countries. In our industry, we're only seeing the crudest beginnings of what can be accomplished to improve productivity and raise the world's standard of living.

FOREIGN INVESTMENT BARRIERS

For the last several decades, the United States has led the way in getting other countries to reduce their tariff barriers to U.S. product exports. As these feasible tariff barriers have come down, however, new, more subtle nontariff barriers appeared. While the Tokyo round MTN agreements addressed some of these nontariff barriers, many remain.

Unfortunately, some of the most serious of the nontariff barriers are ones which are not covered by any multilateral rules, namely restrictions on foreign direct investment. This situation has been in part caused and compounded by two factors.

One U.S. international investment policy has been neutral. That is, U.S. policy has been one of neither encouraging nor discouraging flows of direct foreign investments, and Congress has chosen to lead by example and by avoiding barriers to foreign direct investment in the United States. Unfortunately, we haven't coupled this exemplary role with aggressive efforts to see that it is followed by others. At the same time, our negotiators' attention has been focused on efforts to reduce barriers to products trade under the GATT.

This neutral and passive policy has been undergoing review and consideration by the executive branch, and we are encouraged by actions which signal its increased priority status on the U.S. Trade Representative's agenda.

Two, the public discussion of this issue is quite sensitive for U.S. firms. Companies do not complain openly because they fear retribu-

tion. For years they have had to grapple with investment restrictions on their own, due in large measure to the lack of an aggressive U.S. policy. In some countries, firms have been able to negotiate agreements, often skewed in favor of the host nation, but which at least give them some limited access. These arrangements are something less than secure and subject to change at any moment. Because they are so tenuous, most firms are understandably reticent to be identified publicly with any criticism of the governments involved.

But that's not because the problem is not widespread. It is. Restrictions on foreign direct investment are formidable, especially for the smaller firm.

In our industry in order to sell computer systems or other high technology products to customers overseas there must be a commitment—made by us—to provide service and maintenance for the products we sell. We must have the ability to establish local subsidiaries for these purposes. It is for this reason that we view investment and trade as two sides to the same coin. Their interaction is vital since they provide mutual support for each other in world competition. The ability to invest in manufacturing, sales, and service operations is a primary vehicle of trade today.

For young companies, the most onerous of these are restrictions on our ability to establish local, majority owned sales and services subsidiaries that we can manage properly. In an increasing number of countries, we cannot now establish such subsidiaries unless we are willing to surrender majority ownership to a local partner, and hence, our control over the operations, and over our technology which we developed at great expense. The ability of an American company to take advantage of business opportunities in a rational and timely way is limited if it has approval for such actions. The majority owner may have no interest in our knowledge of the business and may be unable to appreciate the dynamics of the situation as they arise.

There are a host of other restrictions on foreign direct investment, including export performance requirements, demands that a certain percentage of the final product contain materials or technology that is "sourced" locally, requirements that the foreign firm transfer the technology or "know-how" either immediately or after a certain period of time, requirements for local training and conduct of R&D within the host country, and so on. In combination, these restrictions make it unattractive for U.S. firms to invest. Unfortunately, in many cases a decision not to meet these demands may deny a U.S. firm from fully participating in these markets.

Mr. Chairman, companies such as AEA represent are not out simply to take advantage of an economy, and then exit without leaving anything behind. We are interested in complete, long term involvement in those economies, which means realistically contributing to the local infrastructure and technology base. But these contributions flow naturally from the demands of our business. They cannot be dictated by Government fiat. We have a mutual interest which can be met only by allowing a competitive, fast-moving business to be managed like one.

With these kinds of problems in mind, we strongly support legislation that would mandate and authorize our negotiators to seek

bilateral and multilateral agreements to reduce the trade and capital flow distorting effects of such investment restrictions. In the short term, bilateral treaties are the practical solution. We would be following the practices of France, Germany, Japan, and others in doing so. The longer term objective should be multilateral solution, based on the numerous bilateral arrangement that could provide the necessary momentum for new international rules.

We also welcome expansion of the President's authority to respond under section 301 if such negotiations are unsuccessful and such practices continued unjustifiably and unreasonably to burden, restrict, or discriminate against U.S. negotiators presently having little leverage in this area. Presidential authority to respond would provide an appropriate and needed bargaining tool.

INVENTORY OF NTBS TO PRODUCTS, SERVICES, AND FOREIGN INVESTMENT

AEA supports legislation to require the USTR and the Commerce Department to develop an inventory of the major nontariff barriers abroad to U.S. product and service exports, and foreign direct investment. We also support provisions that would require periodic reports to the Congress on the steps the U.S. Trade Representative has taken, or plans to take, to have these barriers reduced or eliminated.

CONSISTENCY WITH THE GATT

Since the creation of the General Agreement of Tariffs and Trade (GATT) the United States has taken the lead role in efforts to persuade our trading partners to adopt the GATT's basic multilateral principles of national and most-favored-nation treatment, and thereby reduce world barriers to product exports. In asserting this leadership role, Congress has deliberately chosen to lead by example by passing trade laws to mirror those of the GATT; I think that it is fair to say that without the U.S. commitment, there would be far more trade barriers abroad than there are today.

AEA believes it is absolutely vital that the United States not abdicate this leadership role. Any action that would compromise this role would likely lead to greater barriers to our product exports. There are many countries which would welcome an excuse to bend to domestic pressures and erect new import restrictions. There are others which might well feel compelled to retaliate if U.S. legislation were to affect exports negatively. And chances are good that our strongest, most competitive, exporters would be the ones to bear the brunt of either reaction. The negative consequences for jobs, income and related tax revenues could be enormous if this were to occur.

The GATT currently provides for reciprocity under mutually agreed procedures and rules. AEA supports that process. AEA therefore would support legislation which would reinforce the U.S. commitment to that process. We would thereby support its continued use in assessing whether a given country or group of countries is measuring up in an overall sense, given the specific circumstances, to its trade agreement or GATT obligation and responsibilities and thereby be eligible for future U.S. trade concessions.

AEA opposes legislation that would allow unilateral retaliation or require bilateral "reciprocity" outside the GATT on an industry sector or product basis. Such legislation would fly in the face of GATT principles and obligations, and would invite protectionism and retaliation here and abroad.

We must aggressively enforce abroad our trade and investment rights and interests. We cannot afford to abdicate our leadership for free and open markets for trade and investment. We must be aggressive at home in resisting the temptation to raise trade barriers. And we must be forward-looking and see to the needs of our strongest industries before the weight of barriers abroad become so heavy as to be politically too difficult to eliminate. Viewed from our perspective, we no longer have the luxury of time. We need legislation and policy which address these objectives now.

Thank you again for this opportunity to submit our comments for the record.

STATEMENT OF HARRY L. FREEMAN, SENIOR VICE PRESIDENT,
CORPORATE AFFAIRS AND COMMUNICATIONS, AMERICAN EXPRESS CO.

Mr. Chairman, my name is Harry Freeman and I am a senior vice president for corporate affairs and communications at the American Express Co. I appreciate this opportunity to submit comments to the Ways and Means Subcommittee on H.R. 1571, "The Reciprocal Trade and Investment Act of 1983," and H.R. 2848, "The Service Industries Commerce Development Act."

American Express enthusiastically supports both bills, and I am particularly pleased that the subcommittee plans to act on the legislation this month.

In recent years it has become evident that the service sector is vital to the economic growth of the nation. The U.S. economy has become a service economy, and trade in services has become the most dynamic aspect of U.S. trade. It is time to recognize these facts. If we expect the U.S. economy to prosper, we must acknowledge the contributions of the service sector and develop policies that will enable services industries to compete fairly in international markets.

The bills under consideration take major steps in achieving those goals. Both H.R. 1571 and H.R. 2848 promote the international competitiveness of U.S. service firms and accomplish high priority objectives of the service sector.

H.R. 1571, "The Reciprocal Trade and Investment Act," introduced by Representative Jim Jones with bipartisan cosponsorship, includes provisions which American Express has supported in previous legislation considered by this subcommittee.

The bill would:

(1) Establish a new set of negotiating objectives conforming the treatment of services and investments to that already recorded under our trade laws;

(2) Grant the President broader authority to identify unfair foreign trade practices and take appropriate remedial action;

(3) Establish a speedier and more flexible system for reacting to unfair trade practices by authorizing fast-track legislation as a section 301 remedy;

(4) Substantially improve information gathering on service industries trade, and require the USTR to report regularly to Congress on barriers to U.S. trade and investment; and

(5) Improve the procedure for opening section 301 cases by permitting the U.S. Trade Representative to initiate investigations.

The provisions providing the President with specific negotiating authority with respect to international trade in services is of critical importance to the service sector. With this expanded authority and a clear congressional mandate to pursue reciprocal agreements, U.S. negotiators will be better equipped to seek the reduction and elimination of unfair foreign trade practices on a multilateral or bilateral basis. With respect to multilateral negotiations in particular, H.R. 1571 authorizes the President to begin to develop international rules, including dispute settlement, applicable to the service sector. This new rulemaking authority will no doubt enhance our ability to negotiate more effective rules within the framework of the GATT, whose trade ministers already agreed to examine service issues at a national level and to exchange the information necessary to expand reciprocal market opportunities.

Equally important, H.R. 1571 clearly states that section 301 of the Trade Act of 1974 applies to services, including overseas investments necessary for the export and sale of services. Section 301 is the most effective trade remedy available under our trade laws for dealing with the various types of unfair trade practices that the service industries face.

Both H.R. 1571 and H.R. 2848 address a serious problem impeding the ability of U.S. policymakers to analyze the scope, growth, and competitiveness of U.S. services trade—the lack of an adequate data base. The U.S. Government does not have a coordinated system to collect, analyze, and publish international service industry data. Both legislative proposals would establish a Service Industries Development Program within the Department of Commerce to correct this glaring deficiency.

As you know, the importance of the service sector to the overall domestic economy has grown dramatically. Services account for 67 percent of our domestic product. Over half of all private sector jobs are produced by the service industries. If Government workers are included, that figure rises to 70 percent. In short, services comprise the largest single share of the total economy.

U.S. service contributions to international trade are equally impressive. Between 1975 and 1980 total world trade in services grew by 149 percent. The United States has been, and continues to be the world's leading service exporter. U.S. businesses account for 20 percent of total world trade in services. In 1982, U.S. service exports produced more than \$36 billion in service trade surplus. Moreover, U.S. service exports generate demand for U.S. merchandise exports. According to an ITC study released last year, U.S. serviced firms abroad generated about \$3.4 billion in exports of U.S. goods. To illustrate the importance of services in producing revenues and jobs in the United States, I have attached two charts

depicting the dramatic growth achieved by the service industries over the last few years.

Clearly it is in our nation's best economic interest to bring services into the mainstream of American and international trade law. We believe H.R. 1571 represents a big step in that direction.

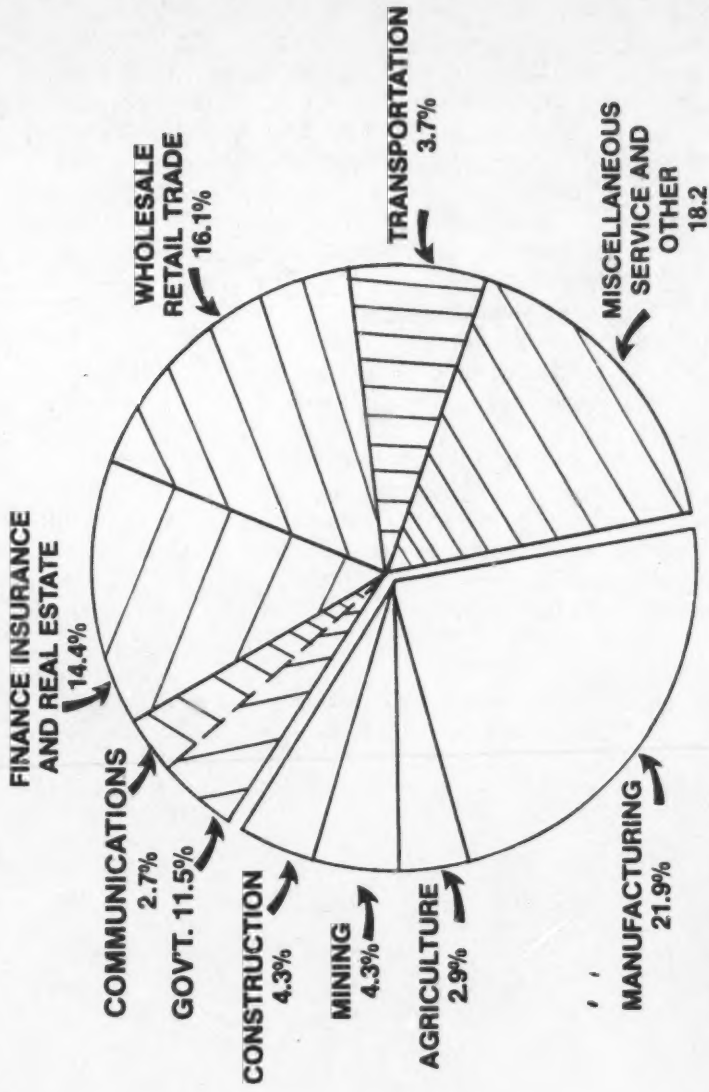
Finally, Mr. Chairman, I would like to address the issue of reciprocity. As a governing principle for our trade relations reciprocity has attracted much controversy. Some argue that a commitment to reciprocity will draw retaliation from our trade partners. Others claim that reciprocity contradicts the basic principles behind an open international trading system. We disagree. American Express strongly supports a return to the principle of reciprocity in the traditional liberal sense which is consistent with America's fundamental free trade principles. Ever since the Congress passed the Reciprocal Trade Agreements Program in 1934 the principle of reciprocity in U.S. trade law has stood for the mutually advantageous exchange of bargained-for concessions; these encompass the broad range of liberal trade principles from unconditional most-favored-nation accords and national treatment to international economic relations based on a negotiated balance of trade. The importance of reciprocity as so defined is further illustrated by the fact that it is also the foundation of the GATT and the basis on which international trade agreements have operated throughout the postwar period.

Again, Mr. Chairman, we thank you for the opportunity to present our views on these two bills. We commend you for your important work on their behalf.

[Charts follow:]

COMPOSITION OF GROSS NATIONAL PRODUCT 1981

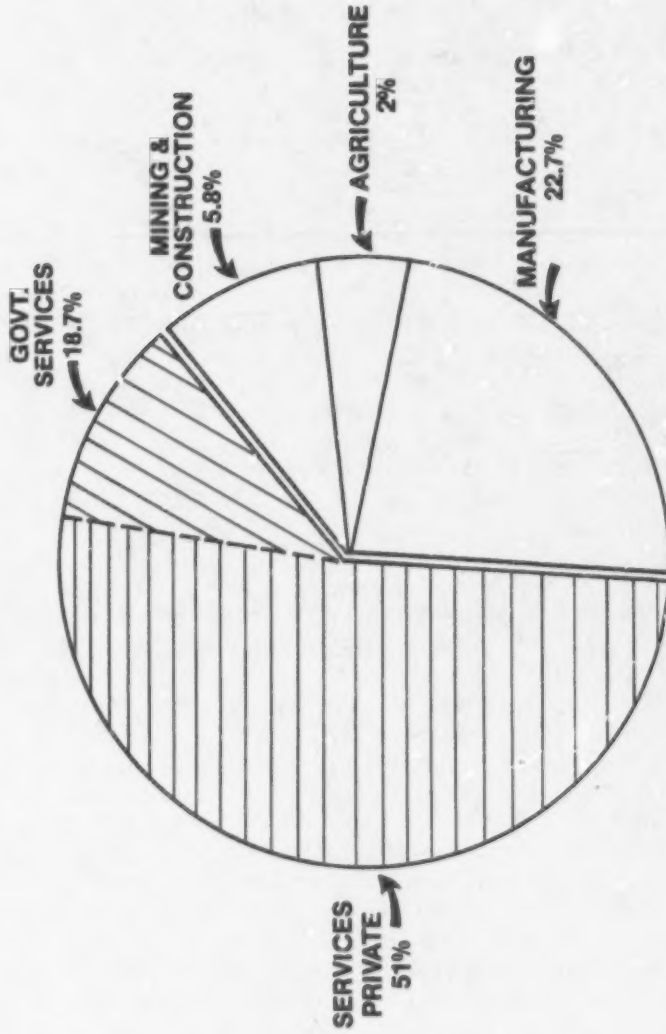
(BILLIONS OF CURRENT DOLLARS)



ALL SERVICES 66.6%
GOVERNMENT 11.5%

U.S. DEPT. OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS
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1981 DISTRIBUTION OF FULL TIME
EQUIVALENT EMPLOYEES AMONG INDUSTRIES



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STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO appreciates this opportunity to present its opposition to H.R. 1571, the Reciprocal Trade and Investment Act of 1983 and to H.R. 2848, the Service Industries Commerce Development Act of 1983. Both bills are supposedly designed to promote "reciprocity" in our trading relationships, with H.R. 2848 limited to trade in services.

While we appreciate the efforts of those members of Congress seeking to make reciprocity a reality in our trade policies, we are concerned that the approach in these bills diverts attention from the real problem, and will have a negative impact on domestic employment and industry.

The AFL-CIO believes that what is needed is vigorous enforcement of existing laws, including remedies provided in the Trade Act of 1974 that were designed to make reciprocity of market access a key element of U.S. trade policy.

In earlier testimony, AFL-CIO President Lane Kirkland called attention to this problem:

Where other nations bar U.S. products through one means or another, the opportunity to enforce U.S. laws to gain access should be encouraged to even out the burdens on the world. Equivalent access to foreign markets is the key.

In August, 10.7 million Americans were listed officially as unemployed. In addition, there are now 1.7 million "discouraged workers" who want jobs and are no longer working, and 5.8 million part-time workers are not working full-time because of the depressed economy—a total of about 18.2 million people. Failure to enforce existing trade law has significantly contributed to this problem.

It is our view that existing trade law empowers the President to act effectively to assure fair trade. However, most past administrations lacked the will to exercise that authority and the present administration is no exception. To date, its legislative trade proposals have done little to redress the imbalance in our trading relationships and the erosion of American industry continues. For example, in the last Congress even a simple extension of the manufacturing clause of the U.S. copyright laws, required a congressional override of a Presidential veto—even though possibly as many as 367,000 jobs were affected.

Many times in the past, the AFL-CIO has come before the Congress asking for help to save American industries and jobs. Too often the responses have been too little or too late or not at all, and year after year the strong, broad-based industrial machine that was America has been weakened and its workers displaced, not because our industries have become obsolete, but because they have been overwhelmed by foreign practices.

In February of last year, the AFL-CIO Executive Council stated, "vigorous enforcement of reciprocity provisions of the Trade Act must be undertaken."

In the Trade Act of 1974, a stated purpose of trade agreements affording mutual benefits is, "to harmonize, reduce and eliminate barriers to trade on a basis with assures substantially equivalent competitive opportunities for the commerce of the United States."

Section 125 of the Act provides in pertinent part, that the President "may at any time terminate, in whole or in part, any proclamation under this Act."

We believe that section 125, which provides the President with termination and withdrawal authority from trade agreements, if utilized, amounts to adequate authority to address the problem of trade discrimination. In addition, section 301, as amended, enables the President to take "all appropriate and feasible action within his power" to obtain the elimination of any act, policy, or practice of a foreign country that is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce." Section 301 covers trade in services as well as goods.

In our view, U.S. problems in international trade result in large measure from a lack of political will, not inadequacy of law. Neither of the two bills being considered by this subcommittee address this fundamental problem. Neither bill creates a mandate for action and enforcement. On the contrary, they continue discretionary authority for the President to act or not to act as he sees fit, even though existing authority to take action has for the most part been ignored by the executive branch.

As the more comprehensive of the two bills, our remarks will focus on H.R. 1571. This legislation seeks to achieve equitable market access for U.S. exports; provides for the identification and analysis of barriers to U.S. trade and investment; and encourages the expansion of international trade, including trade in services, and foreign direct investment through bilateral and multilateral negotiations which will supposedly reduce or eliminate foreign trade barriers and other "trade distorting" measures.

While these goals may have some rhetorical attraction, the practical implications for domestic industry and employment in achieving them have not been properly assessed.

We welcome provisions in the bill which would secure more information on foreign trade barriers. Such information is a necessary precondition for evaluating the domestic impact of foreign practices and developing a coherent strategy to foster economic growth and full employment in the United States. These provisions, however, cannot be implemented unless adequate funding is provided to assure that the directions of the Congress to the executive branch can be carried out.

The problem of inadequate funding in the trade area is not new. The AFL-CIO has repeatedly called upon the Congress to provide sufficient funds necessary to implement U.S. trade laws. Just last year, we testified before this subcommittee in opposition to proposals cutting back on the hiring of import specialists to assure that the imports which come into the United States are properly monitored. Directions to "monitor" imports become unrealistic when there are not enough import specialists in customs to carry out inspections. Requirements to establish import injury by identifying the causal correction between imports and the job loss become unfair and unrealistic if the imports are not adequately monitored.

In addition to information concerning foreign trade barriers, H.R. 1571 requires USTR to report to Congress on any action taken to reduce such barriers. According to section 2 of the bill, the report should include information on any action initiated under

section 301, as well as negotiations or consultations with foreign governments. By placing negotiations on an equal footing with enforcement of our trade laws, this section tends to place even greater reliance on the discretionary authority provided to the President under section 301 to act or not to act. In addition, reasons for inaction need not be reported. The emphasis on negotiations that runs all through the bill will no doubt further reduce what little interest exists in utilizing section 301 and other remedies provided by the Trade Act of 1974 to defend U.S. industry.

The AFL-CIO is concerned that progress toward equitable market access for U.S. exports—the intent of Congress—will be hindered and not helped by this legislation. We believe that it reduces congressional authority, further waters down the minimal safeguards currently in the law, and paves the way for future concessions we can ill afford.

Of particular seriousness, is the explicit inclusion of barriers to investment, as a problem equal to those involving goods and services. The export of capital by American firms and the construction of productive facilities abroad that compete with domestic industry has already caused considerable harm to the American worker. We believe that this addition to current law will only serve to encourage U.S. direct investment abroad, and further weaken our already vulnerable industrial base. In these troubled times, we do not believe that investments overseas should be a negotiating priority of our Government. The delegates to the AFL-CIO convention in November 1981 adopted a resolution on international trade and investment that included the following statement:

Export promotion should be a government priority, carefully targeted to accomplish specific goals. It should not include capital, technology and price-sensitive commodities.

The bill also seeks to encourage further flows of foreign investment into the United States. In this regard, the convention delegates called instead for specific restrictions on foreign investment capital in the United States:

To regulate the immense flows of international investment capital, the U.S. Congress should establish a reporting mechanism that would require all potential foreign investors, or those who would take over an American firm or bank to provide the government with at least 60 days advance notice. The government should be authorized to withhold authorization of such investment or take-over in the national interest. Particular scrutiny should be given to takeovers or investments in energy sources, minerals, and other national resources, farm land, and banks."

We urge that the subcommittee adopt such requirements rather than merely encourage the Administration to pursue a policy of unfettered international investment.

In addition to foreign direct investment, section 104A of the bill details negotiating objectives with respect to services, and high technology products. The AFL-CIO is greatly concerned that in each of these areas, too little attention is paid to the possible impact on the domestic economy and too much authority is given to the President.

The trade problems in services are specific and quite diverse. The problem of building and construction are not the same as the problems of entertainment. There are so many different types of perceived "trade barriers" that U.S. Government offices have made a

list of over "2,000 barriers to services" and this is far from exhaustive. Nor would everyone agree that all should be removed.

These differences make it absolutely essential that policies be based on the practical solutions for specific current problems so that the huge diverse service industry will not be lumped together inappropriately in either bilateral or multilateral negotiations.

Negotiations involve concessions, but the types of concessions that would be considered by negotiators regarding services have not been examined, and the potential impact on U.S. service industries at home is thus incapable of being assessed.

For example, should new rights be given to foreign airlines in the United States in exchange for "concessions" abroad? Should the United States open up for Singapore Airlines the air route from Kansas City to Chicago because not allowing them to have the route is considered a "barrier" to trade? The AFL-CIO thinks not.

In the insurance sector, should the United States preclude the continuance of essential regulations that some view as "barriers" to trade while it seeks negotiated solutions? Or, during negotiations, would it be appropriate for "barriers" in insurance abroad to be removed in exchange for the United States removing "barriers" in shipping here? We believe the United States has already been hurt by too many one-sided negotiations, and that many of the problems can be solved by positive action.

Immigration policy is an integral element in any services trade negotiations. But the bill does not recognize this problem. The issue of requiring that foreign nationals perform certain jobs is a major complaint of the U.S. service industries about barriers they face abroad. But a negotiation to remove such "barriers" could conflict with immigration policy here.

Similarly, the United States should not undermine U.S. standards for lawyers, doctors, accountants, nurses, electricians, etc. Many of these standards have been developed to protect American society as well as its economy.

In addition, the emphasis in this section on the removal of barriers to the transfer of information and the use of data processing facilities does not address the potential impact in the United States. Personal privacy for example, is an issue in terms of "transfer of information." Do we want to forfeit personal privacy in the United States to get help for data transmission from abroad? In addition, this objective could encourage further exports of U.S. jobs in the data processing area to low-wage countries.

In sum, we do not believe that the removal of rules, regulations, and standards that some mistakenly perceive as "barriers" will benefit U.S. industries or U.S. workers.

In the area of high technology products, the AFL-CIO is opposed to additional congressional authority for negotiations. Past negotiations in our view have not been successful. With Japan alone, negotiations concerning semiconductors, and government procurement have rebounded negatively on U.S. producers and U.S. workers. Most nations seek to attract, maintain, and develop technology within their boundaries for defense and economic purposes. If the United States seeks only to reduce foreign practices while the United States remains virtually open, the result will be the loss of

the technology that is the basis for the future recovery of our economy.

The AFL-CIO believes that what appears to be trade distortions in services, high technology, and investment, may in fact be considered essential policies in the foreign and U.S. economies. Trade is not the only issue involved when standards, requirements, and other national provisions are established for investment and the host of services which are provided in any economy.

The AFL-CIO opposes H.R. 1571 because we believe this nation cannot afford a U.S. trade policy that substitutes a cosmetic gesture for effective programs and action. Worse, the inclusion of additional negotiating authority in the areas of investment, services, and high technology products will further discourage positive governmental action. We believe that vigorous enforcement of existing law is long overdue.

AMERICAN HOTEL & MOTEL ASSOCIATION,
Washington, D.C., September 7, 1983.

HON. SAM M. GIBBONS,

Chairman, Subcommittee on Trade, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The American Hotel & Motel Association is a federation of hotel and motel associations located in the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands, having a membership in excess of 8,200 hotels and motels accounting for over 1 million rooms. Inclusive in our membership are all of the major hotel and motel companies.

We are pleased to see congressional attention focused on the problems of trade in services. Clearly there are many areas to be addressed but we have concentrated on the ability of U.S. hotel companies to function abroad and the more general area of international tourism.

Mr. Joseph McInerney, senior vice president, the Sheraton Corp., testified on behalf of AH&MA before the Commerce Transportation and Tourism Subcommittee on H.R. 794 (H.R. 2848). That statement is submitted for your review.

We have no comment on H.R. 1571 directly. We would, however, suggest that the U.S. Travel & Tourism Administration participate in the formulation of U.S. policies on trade in services. As presently drafted in section 6, the agencies which would share in this responsibility are those with regulatory authority, which USTTA does not have.

Should you or your staff require any additional information, please contact our Washington office.

Sincerely,

ALBERT L. McDERMOTT,
Washington Representative.

[Editor's Note: The statement referred to has been retained in the subcommittee files.]

CANADIAN EMBASSY,
Washington, D.C., September 15, 1983.

Hon. DAN ROSTENKOWSKI,
U.S. House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN ROSTENKOWSKI: I am responding to the invitation of Congressman Gibbons, chairman of the Subcommittee on Trade of the Committee on Ways and Means, to submit views on two pieces of proposed legislation, bill H.R. 1571, "The Reciprocal Trade and Investment Act of 1983," and bill H.R. 2848, "The Service Industries Development Act of 1983," which are under consideration by the Subcommittee on Trade of the Committee on Ways and Means. My government has particular concern about the concept of "right of establishment" as it is incorporated in certain versions of reciprocity and trade in services legislation now before Congress. Canada, as the largest host to U.S. foreign investment and as the third largest source of foreign investment in the United States, has a vital interest in the treatment of right of establishment in the formulation of U.S. law.

Canada welcomes foreign investment. Canada believes that maximizing opportunities for the establishment of business promotes a constructive and liberal international investment climate in which multinational enterprises can contribute to international development. The high level of foreign investment in the Canadian economy is proof of the very liberal approach taken by Canada on the question of the establishment of foreign investors over the years. However, customary international law does not provide for a right of establishment. We are concerned that unilaterally embodying the concept of an absolute right of U.S. multinational enterprises to establish in foreign countries, the denial of which would permit retaliatory action under U.S. law, could indeed give rise to contentious problems among nations and make more difficult progress in international discussions on investment and trade in services.

We are pleased to note that bill H.R. 1571 does not include a provision that denial of right of establishment in foreign markets provides justification for action under section 301 of the U.S. Trade Act of 1974. We regret that the Senate version, bill S. 144, does specify right of establishment under its definitions of unreasonable and unjustifiable. We trust that Members of the House of Representatives will resist inclusion of the right of establishment concept if the reciprocity legislation progresses through Congress.

Bill H.R. 2848 also asserts the right of establishment in foreign countries. It would authorize the President to impose limitations on the access of foreign suppliers to the U.S. market based on the existence of distortions of international trade in services, specifically defined to include denial of right of establishment.

I attach some notes which discuss our concerns with the right of establishment concept in further detail. I would be pleased to discuss this matter with you at your convenience.

Yours sincerely,

ALLAN GOTLIEB, Ambassador.

[ATTACHMENT]

NOTES ON RIGHT OF ESTABLISHMENT

A. Certain proposed legislation dealing with reciprocity and trade in services appears to assume that right of establishment is a right under international law.

B. Customary international law does not provide for right of establishment. Such a right can only be established through international agreement.

C. Existing OECD instruments relating to international investment do not provide for right of establishment in the broad sense of right of entry. The 1976 Declaration on international investment and multinational enterprises explicitly states under the section on national treatment that "this declaration does not deal with the right of member countries to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises". In addition, the OECD documents clearly state that "every state has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. The entities of a multinational enterprise located in various countries are subject to the laws of these countries".

D. All participants including the United States, in ongoing U.N. negotiations on a Code of Conduct for transnational corporations have agreed to the following formulation indicating that right of establishment is a sovereign right of states: "states have the right to regulate the entry and establishment of transnational corporations including determining the role that such corporations may play in economic and social development and prohibiting or limiting the extent of their presence in specific sectors".

E. Attempts to shape any future multilateral discussion on the right of establishment and trade in services through the unilateral definition of the right of establishment as a norm in international law (and by extension unilateral projection of domestic laws on and exceptions to right of establishment as a basis for international agreement) will be objectionable to most states and will make any progress in such discussions more difficult.

F. The United States advocates extension of the OECD Code on capital movements to include a binding commitment on the right of establishment, with limited exceptions. A unilateral move risks antagonizing developing countries, who will be important participants in negotiations on trade in services. Developing countries regard the U.N. Code of Conduct as the best way to deal universally with investment questions because it balances the interests of home and host governments and considers both the activities and treatment of multinational enterprises. Also, as stated above, it recognizes the right of states to regulate the entry and establishment of multinational enterprises.

G. The concept of reciprocal action of retaliation in a bilateral investment context is unjustified and farreaching in its implications. Foreign investment screening mechanisms of countries such as Canada, Australia, France, Japan and that of the United States do not discriminate on the basis of nationality. Legislation that at-

tempts to retaliate against such mechanisms in a discriminatory way through actions against foreign investors of that country would be discriminatory in a country-specific way and might have the perverse result of leading other governments to make existing or new screening mechanisms operate in a discriminatory way against U.S. investors.

CATERPILLAR TRACTOR Co.,
Peoria, Ill., September 9, 1983.

Hon. SAM GIBBONS,
House of Representatives,
Washington, D.C.

DEAR SAM. On behalf of the Business Roundtable, I'd like to respond to your invitation to comment on H.R. 1571, "The Reciprocal Trade and Investment Act of 1983."

The Business Roundtable endorses H.R. 1571. We have followed its progress with interest and have communicated our support for S. 144, its Senate counterpart. We believe H.R. 1571 represents a step in the direction of preserving and strengthening the international trading system.

H.R. 1571 would make two contributions to U.S. trade law. First, it would strengthen the President's ability to cope with foreign barriers to U.S. exports. Second, it would strengthen the trade laws as they relate to the U.S. services sector.

"Reciprocity," in the traditional, liberal sense has been the core of American trade law since the Congress passed the Reciprocal Trade Agreements Program in 1934. In our view, "reciprocity" means the mutually advantageous exchange of bargained-for concessions; these encompass the broad range of trade principles from unconditional most-favored-nation accords and national treatment to international economic relations based on a negotiated balance of trade. "Reciprocity" is the foundation of the GATT and the basis on which international trade agreements have operated throughout the postwar period.

H.R. 1571 is responsible trade legislation, consistent with America's traditional free trade principles. It will strengthen the President's ability to negotiate the removal of foreign trade barriers and help ensure equitable access to foreign markets for American exporters.

In March 1982, the Business Roundtable developed a major paper on the topic of "reciprocity" and the appropriate ingredients of a reciprocity bill. The analysis remains valid today. I've attached a copy for the committee's consideration. You may recall that we sent you the paper when it was first developed. H.R. 1571 meets the criteria we've specified in the paper.

In addition, H.R. 1571 will broaden U.S. trade law to include the growing services sectors. In 1982, U.S. services exports generated a \$37 billion services trade surplus. Our country is the world's leading exporter of services.

Yet, U.S. trade law does not adequately deal with service sector trade. Adoption of H.R. 1571 would lead toward three high priority objectives. First, it would establish a congressional mandate for executive branch negotiations leading to the removal of foreign bar-

riers to U.S. services exports. This would serve as a clear signal of the United States' intent to integrate services trade into the international trade laws as embodied in the GATT. Second, it would clarify that services are covered by section 301. Third, it would establish a service industries development program in the Department of Commerce which will expand and improve Government collection of service industries data and promote international competitiveness of U.S. service firms through appropriate economic policies.

For all the above reasons, we urge you to give full support for H.R. 1571.

Sincerely,

LEE L. MORGAN,
Chairman and Chief Executive Officer.

[ATTACHMENT]

STATEMENT OF THE BUSINESS ROUNDTABLE TASK FORCE ON
INTERNATIONAL TRADE AND INVESTMENT, MARCH 19, 1982

Reciprocity in Trade

INTRODUCTION

The international economic policies of the United States historically have sought to expand trade and investment. They have been generally successful.

International institutions, like the General Agreement on Tariffs and Trade (GATT), with its emphasis on multilateral, nondiscriminatory reduction of trade barriers, seek mutually acceptable rules and are key elements of U.S. policy. GATT was designed to prevent a recurrence of the destructive, retaliatory trade policies of the 1930's. The commitment to a multilateral system of negotiations has led to reduced trade barriers which, in turn, allowed an unprecedented expansion of trade and improved U.S. and world prosperity.

But serious questions are being raised concerning the effectiveness of traditional U.S. trade and investment policies in a period of changing economic realities. The international trading system is being increasingly challenged. The trend of the last two decades for governments to try to handle a variety of domestic economic problems through unilateral restrictions on imports and to stimulate exports through government subsidies has grown more pronounced. Such government interventions are distorting both trade and investment patterns.

The very success of GATT in promoting reduction of tariffs, the traditional protectionist measure, has spawned an even more complex and troublesome set of obstacles in the form of nontariff barriers and subsidies. They are sometimes hard to identify, their measurement is elusive and negotiations aimed at their reduction or elimination are difficult.

The United States has identified many such barriers in our international economic relationships. Canada's FIRA and the failure of Japan to open its market to highly competitive U.S. products exemplify the problems causing frustration in the United States. They

have cost our economy business and jobs. Justifiably, they have raised the ire of the American public, which has demanded that its Government do something to offset or combat the trend.

Presently, a prevailing response in the United States to these serious issues has been to embrace the concept of "reciprocity" as a means of reducing foreign trade and investment barriers and thereby improve our access to foreign markets. Reduction of trade barriers on a reciprocal basis is not a new concept for U.S. foreign economic policy. But as articulated by some in recent speeches and legislative proposals, the concept of reciprocity in 1982 differs in definition, approach and application from our traditional understanding of reciprocity.

The Business Roundtable Task Force on International Trade and Investment is concerned that an improper use of reciprocity could worsen, instead of improve, our economic vitality. If misapplied, the concept has the potential of further undermining an already vulnerable multilateral trading system by triggering retaliation. As happened in the 1930's, the short-term advantages which may accrue from the threat and use of retaliatory measures will serve only to destabilize international trade and investment.

At this critical time, the Task Force urges the United States to assert the political will and leadership needed to preserve and strengthen the multilateral trading system. This includes reevaluation of the adequacy of existing U.S. trade laws which give the President the ability to respond to unjustifiable, unreasonable and discriminatory foreign trade and investment practices. When they are inadequate, we should correct the deficiency. But we should not allow solutions to bilateral problems, which deserve serious attention, to weaken the foundations on which our success as a trading nation have been built. That is a potential problem in the "reciprocity" debate, as we see it unfolding.

It is within this context that this statement undertakes to formulate a set of general principles upon which the policy debate about foreign barriers to U.S. exports and investment should proceed. These principles reflect a clarification of the meaning of "reciprocity" in its historical context and the problems inherent in the application of reciprocity to nontariff barriers.

GENERAL PRINCIPLES

The concept of reciprocity has become politically popular. The policy is aggressive and is directed toward foreign targets, particularly the Japanese. While its stated purpose is to compel the opening of foreign markets, many view it as a means to protect the U.S. market against foreign competition.

But reciprocity is a high risk policy. Its application in a retaliatory manner could well backfire and close off foreign markets which are now open to our most competitive industries. Thus it is incumbent on U.S. policymakers to assure that any new legislation which invokes the concept of reciprocity is a step forward and not a step backward toward protectionism.

We do not mean to imply that no new legislation is needed to deal with the problems we confront. Rather, any legislative response must provide for flexibility, recognize our international obli-

gations, take into account our commitment to strengthening and broadening the GATT, and truly promote the expansion of international markets and not their contraction.

The Business Roundtable Task Force on International Trade and Investment believes the following principles must guide the debate about enactment of reciprocity legislation.

First, a change in U.S. trade laws should not be effected unless there is convincing evidence of a need for such change. Bilateral balance of payments deficits do not conclusively establish such a need. Our trade deficit with Japan is unacceptable, but it results, at least in part, from the present undervaluation of the yen and overvaluation of the dollar. At the same time the United States is reflecting a trade imbalance with Japan, we enjoy a substantial trade surplus with the Common Market and LDC's.

We need also to evaluate whether our problem is political rather than procedural. There are a number of areas where it is clear that Japan has violated its GATT obligations. Yet, the United States has generally chosen to resolve these problems through bilateral consultations and negotiations rather than to enforce our rights through the consultation and dispute settlement mechanisms of the GATT. Before we pursue new legislative remedies, we must be sure we are making appropriate use of those already at our disposal.

At least some of our problems are of our own making. Existing laws and practices self-impose barriers to U.S. exports and foreign investment. We have not done enough legislatively to promote U.S. foreign trade. Positive legislation which removes export disincentives and provides useful export incentives may be more effective in enhancing our international reputation and competitiveness than new punitive reciprocity legislation.

Second, new legislation should authorize only those unilateral actions which are consistent with our international obligations under the GATT and other agreements. We should not enact legislation that violates the GATT. The strength of the multilateral trading system lies in GATT's consultation and dispute settlement procedures. These procedures permit countries that feel damaged by the practices of others to bring complaints with the expectation that something will happen: a change in the practice, a dismissal of the complaint, a compromise solution or permission for the complainant to retaliate unilaterally if its case is valid and the offender will not change the illegal practice. The Tokyo round improved those procedures substantially and they deserve to be tested. Legislation which would substitute unilateral action for dispute resolution procedures presently available under the GATT is premature.

Third, in those areas which are not adequately covered by existing U.S. trade laws, new legislation must promote efforts to obtain multilateral solutions and support U.S. foreign investment and exports. Investment and services are not presently covered by GATT and are not covered adequately by existing U.S. trade laws. We need new laws which encourage bilateral negotiations with countries imposing barriers to U.S. investment and exports, and, at the same time, enable us to work within the GATT or other multilateral institutions to expand their coverage and effectiveness. On the other hand, new laws enacted in frustration as a quick unilateral re-

sponse to particular foreign restrictions on U.S. investment and service exports may be more harmful than helpful.

Foreign investment and export of services are two areas in which the United States has a decided comparative advantage, in spite of the existence of foreign barriers. We do not want new reciprocity legislation to backfire and add to these restrictions. Carefully defined authority in these areas may help offset foreign barriers to U.S. investment and services exports. Broad and unguided authority may trigger foreign retaliation against the very sectors where the United States is most competitive and therefore most vulnerable.

Fourth, new legislation should not implement restrictive and retaliatory notions of reciprocity which will undermine reciprocity as a forward looking approach to opening foreign markets through negotiation. Unlimited authority to take unilateral action which retroactively denies access to the U.S. market is contrary to reciprocity's forward looking emphasis. Any new legislation must be consistent with our traditional notion and application of reciprocity.

In a related matter, because of misuse and misapplication, the words "reciprocal" and "reciprocity" have come to be identified, rightly or wrongly, with retaliation and protectionism and should perhaps be banished from the debate. It is unfortunate that words which reflect decades of constructive and forward looking U.S. trade policies have fallen into disrepute. Yet, this development may be a constructive catalyst. It forces us to define more precisely what the concept means and how it should be applied. This will help our trading partners understand more clearly the goals we are striving for.

Several legislative proposals use the phrase "substantially equivalent commercial opportunities" in describing equitable market access. This is a good starting point. The phrase is similar to that used in section 104 and 126 of the Trade Act of 1974 and broadly defines a goal to be achieved in the overall trading relationship between two countries given the special economic circumstances of each. It also recognizes the pitfalls of performance-oriented tests, such as focusing on bilateral balances of trade, or of trying to achieve exact equal treatment on a sector-by-sector or product-by-products basis.

Fifth, trade legislation should not be enforced by independent Federal agencies without provision for adequate supervision and control by the President. Independent agencies may, under certain circumstances, have a constructive role in assessing the impact of foreign trade and investment barriers on matters within their regulatory jurisdiction. However, these agencies should not be given authority or required to develop and implement U.S. foreign trade and investment policies independently.

A particular agency may have the best understanding of the domestic business it regulates, but it will not have a broad understanding of U.S. foreign economic policy. It will not be cognizant of all the foreign policy and national security implications of trade actions. Such institutional deficiencies could lead to unjustified decisions or actions which violate U.S. international obligations and undermine ongoing bilateral or multilateral negotiations.

Independent agencies also are limited in their scope of authority to specific sectors. A unilateral decision by an independent agency to offset foreign barriers in one sector could trigger foreign retaliation in a sector more important to the economic interest of the United States as a whole. Mirror image legislation which would require a particular agency to take retaliatory action in response to a foreign trade or investment restriction compounds the problem by precluding consideration of other factors which necessarily bear upon any trade or investment decision. Any legislation must place trade decisions clearly in the control of the President, the State Department and the relevant trade agencies (the U.S. Trade Representative and the Department of Commerce), to avoid the danger of serving narrow interests at the expense of broader ones.

RECIPROCITY: ITS HISTORICAL PERSPECTIVE

Reciprocity is not a new principle of U.S. foreign economic policy. Reduction of trade barriers on a reciprocal basis has been a basic tenet of our policy since the Reciprocal Trade Agreements Act of 1934.¹ In the postwar period, the GATT, with its express provision in article XXVIII for negotiations on a "reciprocal and mutually advantageous basis," has provided the framework for the major trading nations to make comparable reductions in trade barriers multilaterally. Yet, a precise definition of reciprocity is nowhere to be found.

Similarly, the concept of reciprocity is well entrenched in U.S. trade law, but is not defined. Although the concept was the basis of the Reciprocal Trade Agreements Act of 1934, the term "reciprocity" is not used in that statute.

In drafting the Trade Expansion Act of 1962, Congress was apparently aware of the negotiating problems of trying to define reciprocity and avoided any explicit reference to the term. Instead, the Congress used the vague phrase "affording mutual trade benefits."²

In evaluating the Kennedy round of negotiations, the U.S. Special Trade Representative articulated a more comprehensive, but still vague definition:

[I]n the course of the negotiations, numerous other factors were considered in evaluating the balance of concessions—the height of duties, the characteristics of individual products, demand and supply elasticities, and the size and nature of markets, including the reduction in the disadvantage to U.S. exports achieved through reductions in the tariffs applied to the exports of the United States. * * *

In the Trade Act of 1974, Congress attempted to refine the concept of reciprocity by calling for "competitive opportunities for U.S. exports to the developed countries of the world equivalent to the competitive opportunities afforded in U.S. markets to the importation of like or similar products. * * *"⁴ In adopting this formulation of reciprocity, Congress clearly indicated it was not demanding strict equality of market access. The Senate report noted that:

¹ 19 U.S.C. § 1351 et seq.

² 19 U.S.C. § 1801.

³ U.S. Office of Special Representative for Trade Negotiations, "Report on United States Negotiations" (1967), vol. 1, p. iii.

⁴ 19 U.S.C. § 2114(a).

The requirement for achieving equivalence of competitive opportunities within sectors *does not require equal tariff and non-tariff barriers for each narrowly defined product within a sector, but overall equal competitive opportunities within a sector.*⁵

Congress recognized that the advantage of overall equivalence, as opposed to strict equality, is that it permits one country to lower its barriers on one product in return for another country lowering its barriers on a different product. Reciprocity is achieved in the sense that a better overall balance exists between trading partners.

In contrast, some present day advocates emphasize that reciprocity requires trade concessions to be made on a quid pro quo basis. This is contrary to the historical application of reciprocity as a forward-looking concept. The term reciprocity has traditionally been considered synonymous with "unconditional most-favored-nation treatment" (MFN)—an extension of privileges or a reduction of tariffs to one country must apply to all eligible countries. Conditional MFN, in contrast, provides MFN treatment to a country only so long as it meets its bilateral obligations.

The United States has generally favored unconditional MFN as a foundation of its trade policy. There have been exceptions to this approach—notably, the disastrous experiment under the Smoot-Hawley Tariff Act of 1930—but the United States has found through experience that the unconditional MFN approach provides the soundest basis for meaningful trade negotiations. This approach is codified in the Reciprocal Trade Agreements Act of 1934 and the Trade Expansion Act of 1962.

Unconditional MFN became U.S. policy, because the United States found that conditional MFN, with its emphasis on bilateral special arrangements, created frictions and market disruptions and thus outweighed its usefulness as a device to end discrimination against U.S. products. The U.S. Tariff Commission's 1919 report on "Reciprocity and Commercial Treaties," noted the problem:

[A] policy of special arrangements, such as the U.S. has followed in recent decades leads to troublesome complications. * * * When each country with which we negotiate is treated by itself, and separate arrangements are made with the expectation that they shall be applicable individually, claims are nonetheless made by other states with whom such arrangements have not been made. Concessions are asked; they are sometimes refused; counter concessions are proposed; reprisal and retaliation are suggested; unpleasant controversies and sometimes international friction result.

In the postwar period, the U.S. commitment to unconditional MFN was reinforced when, after its destructive flirtation with protectionism in the 1930's, the United States became a leading member of GATT. Under article I of the GATT, all contracting parties agree to apply unconditional MFN treatment to one another.

Our unconditional MFN policy was modified to a limited extent in the Trade Act of 1974. The Act authorizes the President, if necessary to restore equivalent competitive opportunities with respect to certain major industrial countries, to recommend to Congress:

(1) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under [the 1974 Act] * * * and (2) that any

⁵ S. Rept. No. 93-1298, 93d Cong., 2d sess., 79 (emphasis added).

legislation necessary to carry out any trade agreements under [the 1974 Act] shall not apply to such country.⁶

The 1974 Act makes it clear, however, that the President is to use this authority only if a major industrial country has not made concessions under trade agreements which provide "substantially equivalent competitive opportunities for the commerce of the United States."⁷ The authority is not punitive; it may be invoked only to refuse a particular country the benefit of new concessions we are prepared to grant to a third country under the 1974 Act, but not to serve the special interests of the United States or to threaten retroactive loss of access to U.S. markets.

Similarly, the United States implements the Government Procurement Code on a conditional MFN basis. Section 301 of the Trade Agreements Act of 1979 authorizes the President to extend benefits under the code only to countries which provide "appropriate reciprocal competitive government procurement opportunities to United States products and suppliers".⁸ Again, the statute is forward looking. It refuses to grant new concessions; it does not threaten to deny concessions previously granted; and it is based on a multilateral agreement as opposed to unilateral action outside of the GATT framework.

As is the case in U.S. trade law, GATT does not contain a precise definition of reciprocity. GATT article XXVIII merely states that negotiations should be on a "reciprocal and mutually advantageous basis."

In GATT, reciprocity has been employed primarily in the area of tariff reductions. Originally, GATT negotiators tried to measure reciprocity in terms of "trade coverage." They determined the annual volume of imports to each country within the tariff classification at issue and attempted to achieve equal reductions of duties. This proved time-consuming and unworkable. No clear picture of reciprocity emerged since the method of measuring relative concessions ignored the depth of cuts and thus was subject to much dispute. Only when the sixth round of MTN negotiations (Kennedy round) abandoned this methodology in favor of a simpler 50 percent across-the-board tariff reduction were meaningful results achieved. Reciprocal concessions were achievable only when it was realized that exact reciprocity was unworkable.

The point of this analysis is that the concept of reciprocity—under both U.S. law and GATT—has traditionally been applied in a forward looking manner for the purpose of opening up markets. It has not been used as a device by which to exact concessions on a quid pro quo basis or demand strict equality of market access.

The variety of reciprocity now being advocated by some appears to veer sharply from what reciprocity has meant historically. Its thrust is more protectionist and retaliatory. The new reciprocity emphasizes unilateral enforcement, rather than bilateral or multilateral cooperation based on mutually acceptable rules.

⁶ 19 U.S.C. § 2136(c). It is important to note that in agreeing on this language the Congress specifically rejected a proposal to apply conditional MFN to "any trade agreement."

⁷ 19 U.S.C.A. § 2136(b).

⁸ 19 U.S.C. § 2511(b)(1).

The new reciprocity rests on the dual assumptions that (1) trade and investment opportunities offered by the United States to other countries have been greater than the opportunities we have been afforded, and (2) our enforcement tools are inadequate to correct the imbalance. Its focus appears to be on closing U.S. markets to any country which does not afford U.S. businesses exactly equal opportunities in particular market sectors, rather than on achieving equivalent trade concessions across a broad spectrum of products and sectors. The proposals promote conditional MFN treatment not as a means of assessing the performance of our trading partners under negotiated multilateral and bilateral agreements, but as a substitute for those agreements. In these respects, the new reciprocity means something vastly different from the reciprocity which has served as a cornerstone of American foreign trade policy in the past 50 years.

PROBLEMS IN APPLYING RECIPROCITY TO NONTARIFF BARRIERS

Errors in measurement: The equality straitjacket

U.S. Senator Robert Dole recently wrote that reciprocity "means that other countries should provide us with trade and investment opportunities equal not simply to what they afford their other most-favored trading partners but equal to what we afford them." The objective of open markets for U.S. goods, investments, and services is laudable, but experience—like the early GATT efforts to reduce tariffs—has shown us that precise equal treatment is difficult, if not impossible, to attain.

These problems are multiplied today because we are dealing mostly with nontariff barriers which are far more difficult to identify and quantify than tariff barriers. An insistence on exactly equal concessions will not work because the form, application, and effect of nontariff barriers are so varied. Moreover, an insistence on equal concessions may not be to our advantage. The United States, with its comparatively open markets, would enter negotiations with less to concede.

The U.S. policy should be flexible enough to allow it to vary its approach depending on the identity of the country with which it is negotiating. For example, the United States might be less insistent upon obtaining equal treatment from developing countries whose efforts to protect their infant industries may be justified, than from an industrialized trading partner whose nontariff barriers are designed to obtain unjustified trade advantages.

In short, exact equal treatment may be too rigid a policy. It would prevent the United States from obtaining concessions it needs and force us to give concessions we do not want to give. Our goal should be to open markets and we should not put ourselves in a straitjacket which restricts our movement in that direction. Particularity, a straitjacket that defies measurement.

Reciprocity is a two-way street

The goal of reciprocity is to open markets, not to close them. Some proponents of reciprocity legislation assert that a greater threat of unilateral action by the United States will help achieve that goal.

That position carries risks which must not be minimized. First and foremost is the possibility of retaliation. Faced with unilateral action by the United States, our trading partners may take unilateral action of their own which would not necessarily be confined to the product or industry which is the subject of our action. In assessing the present situation, it must be kept in mind that the United States is a major net exporter of services (approximately \$60 billion), agricultural goods (over \$43 billion); and our foreign direct investment, about \$213.5 billion, is triple that of foreign companies in the United States. We are not invulnerable.

Nor, as U.S. Trade Representative William Brock said in Davos, Switzerland, last month, is the United States "completely pure." Our laws protect domestic chemical, textile, and certain agricultural products, among others. If a restrictive and retaliatory concept of reciprocity finds its way into U.S. trade policy, we can expect our trading partners to act similarly. The process would be degenerative, and markets could contract while the international economic community seeks the lowest common denominator.

Reciprocity, if applied narrowly, could also interfere with U.S. laws and policies affecting business which, though operating as barriers to trade, promote legitimate public policy. For example, the Glass-Steagall Act prohibits any bank, whether U.S.- or foreign-owned, from underwriting securities in the United States. At the same time, the International Banking Act and regulation K permit foreign branches of U.S. banks to underwrite securities abroad. This puts them on a comparable competitive footing with foreign competitors. Should we regard it as a legitimate manifestation of reciprocity for the Common Market to withdraw underwriting privileges from U.S. banks in Europe, unless the United States permits European banks to underwrite securities in the United States? The question, of course, is rhetorical and is posed only to point out that we cannot legitimately expect other countries to afford us the exact investment opportunities we afford them without appreciating that we are not always in a position to reciprocate.

Our commitment to GATT

Commitment to the new reciprocity could lead to actions in consistent with our GATT obligations. GATT article I assures unconditional most-favored-nation treatment to all signatories. Legislation which would deny MFN treatment to a GATT signatory who refused to provide the United States particular trade concessions would violate that provision. It is not a satisfactory response to say simply that GATT is commonly violated.

The Task Force has urged the U.S. to redouble its efforts to strengthen the GATT. The GATT has inherent deficiencies. For example, Japan's refusal to permit self-certification of imported automobiles is clearly a nontariff barrier of the most preclusive kind, but it accords with the GATT because it applies to all countries without discrimination.

Many trade barriers presently in force among GATT signatories, such as a number of the quotas maintained by Japan, do not accord with the GATT. Yet, the United States has not challenged those barriers under the GATT's consultation and dispute settlement

procedures. We cannot accuse the GATT of not working if we have not tested its effectiveness as a political or legal instrument.

Enactment of legislation which could lead to a violation of the GATT by the United States will have a symbolic and practical impact. We must make sure that the laws we enact and the actions we take do not adversely affect U.S. foreign investments and exports, or preclude or chill efforts to work within the framework of the GATT and to extend it.

Mirror-image legislation

Narrow legislation which would mirror restrictive trade practices imposed by other countries or which would authorize or require a particular Federal agency to make a specific retaliatory response to such restrictive trade practices present special problems. By their nature they are sectoral and reflexive and deny the United States the flexibility of accepting trade restrictions in one sector in return for concessions in other sectors.

Second, mirror-image legislation fails to take into consideration the problem of national treatment. U.S. laws affecting foreign investment in many areas are among the least restrictive, but in the areas of antitrust, securities and banking, to name three, this country's laws and regulations are much more stringent than those of many of our trading partners. We must recognize that we cannot expect the laws of other countries to parallel our own.

Third, laws which entrust enforcement of reciprocity principles to independent agencies lose sight of the fact that international trade policies do not always lend themselves to a sectoral or product-by-product approach and are often inseparable from foreign and national security policy.

A CONCLUDING COMMENT

American businessmen, American workers, and the American public are angry. So are American policymakers. The anger is directed at those nations—most importantly Japan—that are identified as having erected barriers to trade and investment, while simultaneously flooding the United States and other countries with their goods.

The mood has a positive impact on the U.S. policymaking process because it has clearly prompted a spirited debate on the adequacy of U.S. trade laws and the multilateral economic system to deal with perceived inequities in our trading and investment relationships. Such attention to our trade and investment problems is long overdue, and the Business Roundtable welcomes it.

The Task Force recognizes that new legislation may be needed. To the extent it is, we urge its commitment to the general principles enunciated above. The task force is undertaking its own review and analysis of individual legislative proposals that have been made.

STATEMENT OF DR. AVA S. FEINER, DIRECTOR, INTERNATIONAL TRADE
POLICY, CHAMBER OF COMMERCE OF THE UNITED STATES

The U.S. Chamber of Commerce welcomes the opportunity to submit testimony in support of H.R. 1571, a bill aimed at improving access for U.S. business to foreign markets. We commend Representative Jones and the many cosponsors of H.R. 1571 for their efforts to achieve the enactment of market access legislation that advances our Nation's interest in the liberalization of international trade and investment practices.

H.R. 1571 is similar to S. 144, a measure that was twice approved by the Senate in connection with bills to suspend the withholding of taxes on interest income. H.R. 1571's major features are: (1) a mandate for new negotiating objectives aimed at extending and strengthening international rules of trade, particularly concerning trade in services and high technology products and the treatment of international investment; (2) a required report by the U.S. Trade Representative on significant barriers to U.S. trade and investment; (3) a required report on factors affecting U.S. competitiveness in industries with high growth potential in world markets; (4) a clarification of the President's authority to take remedial action against unfair foreign trade practices, and of the statutory basis for such actions; and (5) improvement of private sector access to remedy through USTR self-initiation of investigations into unfair foreign trading practices under section 301 of the 1974 Trade Act, as amended.

The bill is a timely and positive response to the disturbing growth of restrictive market practices abroad. At the same time, it serves U.S. economic interests by seeking to build on the rule of law in international commerce, rather than jeopardize world growth through self-defeating restrictions on imports. Therefore, in the context of supporting a positive U.S. trade policy, we would oppose any market-restricting amendment or substitute for H.R. 1571, such as the auto domestic content bill. We would also oppose the addition or adoption of any measure proposed to "strengthen" the market access bill with protectionist features, such as automatic reciprocal retaliation.

Trade measures before Congress this year should be assessed against the backdrop of pressures worldwide to close markets to trade. A rising tide of trade restrictions threatens to end the prosperity and economic efficiency built up since the end of World War II. Predatory trade practices plunged the world into the Great Depression. Today, with much greater interdependence in trade, finance, investment and technology, an even more severe breakdown could take place.

We are now at a watershed in world trade. By yielding to frustration and protectionist pressures, the United States would lead the world into an era of economic stagnation. But by combatting the closing of markets worldwide through negotiation and a responsible defense of our trade rights, the United States can lead the world in building on our economic achievements since the end of World War II.

To a large degree, today's trade problems reflect recent worldwide growth problems. Slow growth shrinks world markets for ex-

ports, intensifies trade competition, and heightens resentment among all trade competitors. Slow growth also stifles employment and reduces the alternatives to workers in firms that have lost competitiveness. Strong sustained recovery in the United States should ameliorate this aspect of trade problems.

The recent alignment pattern of the exchange rates of major currencies has been a second source of tension in trade relations. The value of the dollar in relation to other major currencies remains high, inflating the foreign cost of U.S. products and lowering the cost of foreign products in U.S. markets. The high value of the dollar probably is the single most important cause of the recent decline in our trade position.

A third and more enduring source of trade tension is change in the structure of the world economy. Technology, progress and competition are changing the structure of the economy of the United States and other countries. Over time, these changes should expand jobs and raise living standards in all countries, including the United States. But in the near term, certain workers and firms bear heavy adjustment burdens. This situation creates opposition to change and pressures for import protection.

Finally, some of our trading partners increasingly use nontariff barriers and export assists in an effort to stimulate growth, ease adjustment pains and foster primacy in select key industries. In some countries, these measures form part of a concerted industrial policy. Although often justified as purely "domestic" policies, under certain conditions, they can significantly distort international markets, robbing unaided U.S. firms of sales.

Obviously, enactment of H.R. 1571 cannot invigorate world growth or ease the pains of economic change, nor can it alone right the wrongs of international trade practices. However, H.R. 1571 takes the important step of setting the right direction for U.S. trade laws and policy—to extend international rules to inadequately covered areas and enforce U.S. laws in defense of market access for U.S. business, consistent with our international rights and obligations.

When our trading partners fail to live up to their commitments, we must assert our rights. When the internal characteristics of their economies, their domestic economic policies, or their cultural biases frustrate the objectives of the agreements we have negotiated, we must go back to the bargaining table. Our Government must take up the cause of industries and individual companies when other countries do not play by the internationally accepted rules of the game. We must also pursue new international agreements to cover unregulated areas of economic activity, as necessary to advance our interests.

The U.S. Chamber has in the past maintained that new legislation is not needed to address inequities in market access, believing that the executive branch has tools sufficient to enforce U.S. trade rights and to secure reasonable market access for U.S. products, services, and investment. The most comprehensive is section 301 of the Trade Act of 1974, as amended.

However, questions have been raised concerning the adequacy of section 301 for responding to unreasonable foreign government actions, not only against the merchandise trade of the United States,

but also against U.S. services and high technology trade, the trade-related aspects of U.S. foreign investments, and unreasonable actions denying adequate protection of U.S. intellectual property rights. Therefore, in the interest of assuring that the scope of section 301 is fully understood, the U.S. Chamber supports legislation that clarifies its coverage, without running afoul of any of our international commitments. The Chamber also has maintained that the executive branch should utilize its section 301 authority vigorously and increase the self-initiation of cases, whenever a serious problem properly treated under section 301 comes to its attention. While we do not believe that Congress should mandate that section 301 be invoked in every instance of alleged unfair trade practice, or that remedies need always be retaliatory, we do feel that it is appropriate for Congress to signal its concern about past executive branch reluctance to use this authority.

However, the Chamber would oppose any effort to construe H.R. 1571 as creating a new section 301 cause of action based only on alleged foreign denial of "reciprocal" treatment. The establishment of a new cause of action is not required, though section 301 would be improved by clarification of the statutory basis of claims against unjustifiable or unreasonable foreign trade actions, as proposed in H.R. 1571.

We would also oppose efforts purportedly to "strengthen" section 301 by calling on the President to respond to unreasonable foreign actions under U.S. law by mirroring them; by enforcing a "bilateral balancing" of trade; or by retaliating by reflex, with little consideration of the cost to our economy, of the circumstance of the foreign practice, or U.S. international obligations.

Mirroring the unfair practices of foreign countries serves only to import their trade and industrial policies indiscriminately. Reflex retaliation permits foreign practices, rather than the deliberate weighing of our national interests, to shape our economic laws and policies. Bilateral balancing would defeat the gains arising from multilateral trade based on comparative advantage. It would also expose the United States to the "balancing" restraints of trading partners, such as the European Community, who have run deficits in their trade with the United States.

Finally, strict "reciprocity" formulas are unworkable and a recipe for accelerating international conflict. It would be unrealistic for the United States to insist that all countries adopt our laws and policies. Such efforts are apt to fail, producing only an exchange of recriminations.

A vital contribution of H.R. 1571 to U.S. trade objectives is that it would provide the President with authority to negotiate for the liberalization of trade practices concerning services, high technology products and investment, and would clarify his authority to apply section 301 in defense of U.S. rights in connection with services trade and trade-related investment.

The provisions of H.R. 1571 aimed at dismantling barriers to U.S. trade in services are of great importance to the Chamber. Services have become a vital source of strength in the U.S. economy. The reduction of overseas barriers to trade in services is essential to our country's economic progress. The November GATT Ministerial appears to have opened a channel for negotiation in services, but a

strong legislative mandate is necessary to enable firm U.S. leadership in building an international framework of discipline.

American service industries encounter a formidable array of barriers in both developing and industrialized countries. In spite of the diversity of the services, many of the obstacles faced are the same. Also, barriers are looming over some of the rising, heretofore unrestricted, service activities, such as information transmittal, electronic communication, and transborder data flows. Also, in certain service areas where international arrangements once protected service exporters—for example, in the commercialization of industrial property rights—traditional protections are eroding.

U.S. trade law with respect to services trade is incomplete, but radical reform is not required. The following revisions or clarifications are needed:

A clear directive to the President to seek agreement in service trade as a principal objective under section 102 of the Trade Act of 1974, as amended, would further strengthen our negotiators' hands.

Clarification is needed as to whether trade barriers affecting the foreign establishments of U.S. service enterprises in foreign countries are within the realm of "barriers to international trade" as the term is used in section 102. The Chamber feels they are, but arguments have been made that establishment-related issues involve investment, not trade, and, therefore, are not covered.

Consultation by U.S. negotiators with private advisory committees is necessary while negotiating objectives are being developed. Also, State regulators should be a part of preparations for negotiations dealing with services they regulate. The U.S. Trade Representative (USTR) already does an excellent job of keeping in touch with the private sector. Nonetheless, it needs to be made more clear that the Federal Government should consult with industry and, as appropriate, with the States, before the United States sets its negotiating strategies or decides on methods of implementation.

The USTR's office, or an analogous trade agency under any trade reorganization plan, should, through the Trade Policy Committee and its subcommittees, have the lead trade policy responsibility for services and the authority necessary for involving and coordinating Federal departments and agencies, including independent regulatory agencies, in service trade policy formulation and negotiation. Federal departments and agencies responsible for service sector activity and its regulation should advise the USTR of pending matters involving the treatment accorded U.S. service sector interests in foreign markets or allegations of unfair foreign practices in a service sector and the proposed disposition of such matters. While openness of foreign country markets should be a consideration in regulatory agency decisionmaking, we do not support sectoral or mirror-image reciprocity in U.S. regulatory proceedings or in services trade.

The Secretary of Commerce should be authorized to establish a service industries development program designed to promote U.S. service exports and to collect and analyze appropriate data. This is now done through Executive order.

While we believe that section 301 is fully intended to address subsidies and unfair pricing in the service sector, in practice questions have been raised by the executive branch as to whether to

apply this authority in such cases. Clarification by amendment to section 301 or by report language is needed to resolve this situation.

The Chamber supports H.R. 1571 because it helps advance the fundamental U.S. interest in a liberal and expanding world trade order. Expanding trade stimulates growth, employment, industrial competitiveness and higher living standards in the United States.

U.S. gains from trade are best achieved through the liberalization of trade practices, not by a closing of markets to trade. Progress is made by building on our achievements, not by destroying them. Efforts to improve U.S. market access should rely on aggressive negotiating, effective enforcement of U.S. laws in defense of our rights, and economic policies that support fierce competition by U.S. business for world markets. H.R. 1571 rightly encourages our efforts in a positive direction.

Although the immediate results of the recent GATT Ministerial were disappointing in some important areas, its lasting consequences will depend on the ability of GATT's leading members to follow through with commitment to maintain and expand on international rules governing trade and investment. The U.S. role in the effort will be critical. Enactment of the market access bill would provide a framework for strong and responsible U.S. leadership. Market restricting bills, or amendments to this bill, could badly discredit that leadership, and should be rejected as counterproductive.

STATEMENT OF THE COALITION OF SERVICE INDUSTRIES

The Coalition of Service Industries appreciates this opportunity to comment on services trade legislation currently under review by the Subcommittee on Trade of the Committee on Ways and Means. The importance of trade in services to the overall health of the U.S. economy has gained much wider recognition over the last year, and the Coalition urges this Subcommittee and the House of Representatives to enact legislation placing services on an equal footing with goods under the nation's trade laws. As the only broad-based membership organization representing U.S. service companies, the Coalition¹ wishes to commend the subcommittee for its interest in addressing the special needs of the services sector and for its thoughtful attention to the particular complexities of services trade issues.

The relationship between rapid growth in the services sector and future domestic prosperity is clear.² Services now account for fully 67 percent of total GNP. In the important area of domestic employment, over half of all private sector jobs are produced by service industries and, if Government workers are included, 70 percent of all jobs in the U.S. economy derive from the production and delivery of services. In 1982, activities of U.S. service industries abroad resulted in an estimated \$135.7 billion in repatriated foreign revenues and generated roughly \$3.4 billion in related merchandise

¹ Appendix A lists the Coalition's member companies.

² Appendix B contains charts showing the services share of GNP (1981), U.S. balance of trade, and domestic fulltime employment.

trade transactions. The performance of service industries has become, therefore, the brightest spot in this nation's economic future. Moreover, this growth in services is all the more striking because it has occurred in an era of general economic stagnation.

At the same time, however, services have also become increasingly important to the economies of other industrialized nations. As recent experience demonstrates, U.S. service industries face numerous challenges to their success in world markets. These challenges frequently assume the form of foreign anticompetitive practices. In the guise of implementing effective internal economic policies, many of this nation's trading partners have developed a wide variety of nontariff barriers intended to enhance their capabilities in high-value, technology-driven service industries.³ Largely as the result of foreign industrial policies and other trade-distortive practices, the U.S. services sector has seen its probable share of world trade in services decline from 25 percent in recent years to 20 percent in 1981. Unless Congress moves forthrightly to begin a comprehensive and pragmatic restructuring of U.S. trade laws and conforms the treatment of services to that already accorded goods, the Coalition expects that the U.S. share of world services trade revenues will decline even more sharply in the years ahead.

Of course, many services trade issues do not lend themselves to legislative remedies, essentially because service industries are inherently heterogeneous. However, there are a number of trade problems that are common to the diverse industries engaged in providing services. Among these common problems are those related to inadequate data collection and effective implementation of general trade policy objectives. The Coalition believes that many of these common problems, which are only marginally sectoral in nature, can be corrected by the enactment of omnibus services trade legislation. In light of its preference for comprehensive legislation, therefore, the Coalition strongly endorses H.R. 1571, the "Reciprocal Trade and Investment Act of 1983," introduced by Representative Jim Jones. For the same reason, the Coalition also supported S. 144, the "International Trade and Investment Act of 1983," which recently passed the Senate.

In the Coalition's view, H.R. 1571 contains a number of amendments, including those concerning voluntary data collection, that are especially well-suited to encouraging cooperation between government and the private sector in order to expand export opportunities for service industries. The other proposal under consideration by the subcommittee, H.R. 2848, the "Service Industries Commerce Development Act of 1983," reported recently by the Committee on Energy and Commerce, represents a commendable effort to attack unfair trade barriers in services. Several provisions in H.R. 2848, such as those establishing a service industries development program and broadening presidential authority to restrict the activities of foreign service firms operating within the United States, have broad support in the domestic services community. However, H.R. 2848 also contains certain amendments which the Coalition does not support. In particular, H.R. 2848 would compel companies

³ Appendix C contains a partial listing of nontariff barriers confronting U.S. services companies abroad.

to produce detailed business information to assist government in fulfilling its policymaking function; the proposal would also create broad discretion in Federal administrative agencies, subject to unduly limited judicial review, to exact civil penalties for the failure to produce such information upon request. By contrast, H.R. 1571 strikes a more appropriate balance between the crucial need to establish an efficient mechanism for information gathering and to restrain direct Government intervention in the private sector. The Coalition believes H.R. 1571 addresses data collection and other services trade issues in a manner consistent with the Nation's free enterprise system and overall liberal trade policies. Several provisions of H.R. 1571 are discussed briefly below.

EQUALIZING TRADE LAW TREATMENT OF SERVICES

The need to extend trade laws to services is well-documented. H.R. 1571 takes a general approach to bringing services under U.S. trade laws and provides a flexible system for addressing a wide variety of services trade issues, ranging from remedial action against unfair trade practices to specific negotiating objectives and a sound program designed to promote services exports. The Coalition supports this inclusive approach to services trade legislation.

TRADE POLICY FORMULATION AND IMPLEMENTATION

Although it has not formally adopted a position on pending trade reorganization proposals, the Coalition generally favors the approach of H.R. 1571, which clarifies the authority of the U.S. Trade Representative and the Department of Commerce with regard to their respective responsibilities for trade policy formulation and administration. In practical terms, the Coalition believes that a central coordinating body should be responsible for developing and implementing trade policy. The Coalition does not favor the provisions of H.R. 2848 vesting these trade responsibilities in the Secretary of Commerce, since the U.S. Trade Representative functions as an effective and neutral referee in managing trade policy.

DATA COLLECTION

The inadequacy of the "benchmark survey" and "balance of payments" data as bases for formulating services trade policy is widely recognized. H.R. 1571 authorizes the Commerce Department to expand its data collection activities in order to develop a more accurate picture of the actual value of international services transactions. In addition, H.R. 1571 would not place the burden of data collection for the purpose of assisting in the development of trade policy on the private sector; rather, under this proposal, industry would have an affirmative obligation to supply the Government with business information when investigations into unfair trade practices have been initiated. The amendment also provides unequivocal guidelines for the use and disclosure of business information.

IDENTIFYING BARRIERS TO TRADE IN SERVICES

Foreign trade barriers faced by U.S. service industries run the gamut from discriminatory licensing procedures and undue limitations on personnel visas to overt foreign government subsidies and excessively restrictive procurement policies. H.R. 1571 establishes a mechanism for identifying services trade barriers by requiring that the U.S. Trade Representative compile annual inventories and report to the Congress concerning domestic and foreign factors inhibiting the development of trade in services. In particular, the Coalition approves the requirement contained in H.R. 1571 that a detailed assessment of foreign trade barriers be developed on an annual basis by an interagency trade organization and coordinated by the U.S. Trade Representative's Office.

REMEDIES FOR UNFAIR SERVICES TRADE PRACTICES

The Coalition believes section 301 should be applicable to trade in services. H.R. 1571 declares, in unambiguous terms, that section 301 should be applied to services transactions, including those investments abroad that are necessary for the export and sale of services. Further, H.R. 1571 creates a more flexible system than presently exists for responding to trade-distortive practices by authorizing a "fast track" legislative remedy under section 301, a provision similar to the section 151 authority that assisted the speedy enactment of implementing legislation following the Tokyo round of multilateral trade negotiations. The Coalition strongly recommends the adoption of these section 301 amendments. With their enactment, U.S. service industries will have an appropriate remedy for the injurious effects suffered as the result of foreign below-market pricing policies and subsidized export activities.

CONSULTATION WITH STATE AUTHORITIES

Regulation of some service industries, such as banking and insurance, is primarily a prerogative exercised by the States. H.R. 1571 acknowledges these state functions by requiring that State regulatory agencies be allowed to participate in developing U.S. negotiating positions and implementing trade agreements. The Coalition endorses the consultation provisions of H.R. 1571, including those providing for the creation of nongovernmental advisory committees.

NEGOTIATING OBJECTIVES

Although comprehensive legislation and certain adjustments in domestic trade policy administration represent significant steps toward addressing services trade problems, the Coalition believes a universal return to the traditional principle of reciprocity is required to achieve progressive liberalization of trade in services. H.R. 1571 directs the President to seek negotiations on a multilateral basis and specifies negotiating objectives tailored to the diverse needs of various segments of the services sector. The Coalition especially approves the emphasis accorded national treatment under H.R. 1571 and believes the negotiating objectives contained

therein successfully avoid the sort of retaliatory approach to trade that invites reprisals from the Nation's trading partners.

In conclusion, the Coalition urges the subcommittee and the House of Representatives to act on this legislation in September or soon thereafter. Services trade legislation will arm the executive branch with the necessary tools to undertake serious multilateral negotiations to reduce barriers to trade in services. Ultimately, these issues must be resolved by the General Agreement on Tariffs and Trade (GATT), which is the proper forum for establishing international rules applicable to service transactions. The United States will be ill-prepared to meet the challenge of future GATT negotiations, however, in the absence of a clear legislative mandate defining the limits and objectives of U.S. services trade policy.

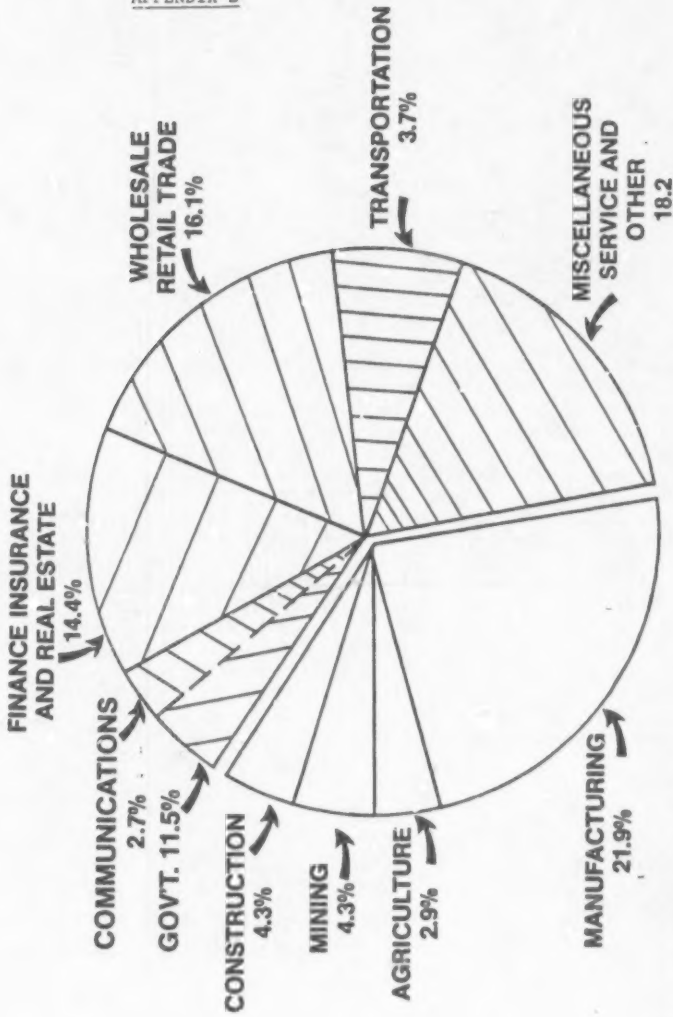
APPENDIX AMEMBER COMPANIES

American Express Company - James D. Robinson, III, Chairman and CEO
 American International Group, Inc. - Maurice R. Greenberg, Chairman and CEO
 American Medical International, Inc. - Royce Diener, Chairman and CEO
 American Telephone & Telegraph Company - William M. Ellinghaus, President
 ARA Services, Inc. - Joseph Neubauer, President and CEO
 Archer-Daniels-Midland Company - D.O. Andreas, Chairman of the Board
 Bank of America - Leland S. Prussia, Chairman of the Board
 Bechtel Power Corporation - Jack Barnard, Vice President and Director
 Beneficial Management Corporation - Finn M.W. Caspersen, Chairman of the Board
 CBS, Inc. - Thomas H. Wyman, President
 Chase Manhattan Bank, N.A. - Thomas G. Labrecque, President
 CIGNA Corporation - Wilson H. Taylor, Executive Vice President
 Citibank, N.A. - Walter B. Wriston, Chairman
 The Continental Corporation - John P. Mascotte, Chairman and CEO
 Deloitte, Haskins & Sells - Charles Steele, Managing Partner
 Flexi-Van Corporation - Lewis Rubin, President and CEO
 Fluor Corporation - J. Robert Fluor, CEO
 Intercontinental Hotels - Paul Sheeline, CEO
 International Business Machines Corporation - John R. Opel, Chairman of the Board
 The Interpublic Group of Companies, Inc. - Philip H. Geier, Jr., Chairman and CEO
 Johnson & Higgins - Robert B. Hatcher, Jr., CEO
 Manpower, Inc. - Mitchell S. Fromstein, President and CEO
 Marsh & McLennan, Inc. - A. C. di Montezemolo, Chairman
 Merrill Lynch & Co., Inc. - Roger E. Birk, Chairman and CEO
 Peat, Marwick, Mitchell & Co. - Thomas L. Holton, Chairman and CEO
 Phibro-Salomon, Inc. - David Tendler, Co-Chairman and CEO
 Sea-Land Industries, Inc. - Charles I. Hiltzheimer, Chairman and CEO
 Sears, Roebuck and Company - Edward R. Telling, Chairman and CEO
 Young and Rubicam, Inc. - Edward Ney, Chairman of the Board

APPENDIX B

COMPOSITION OF GROSS NATIONAL PRODUCT 1931

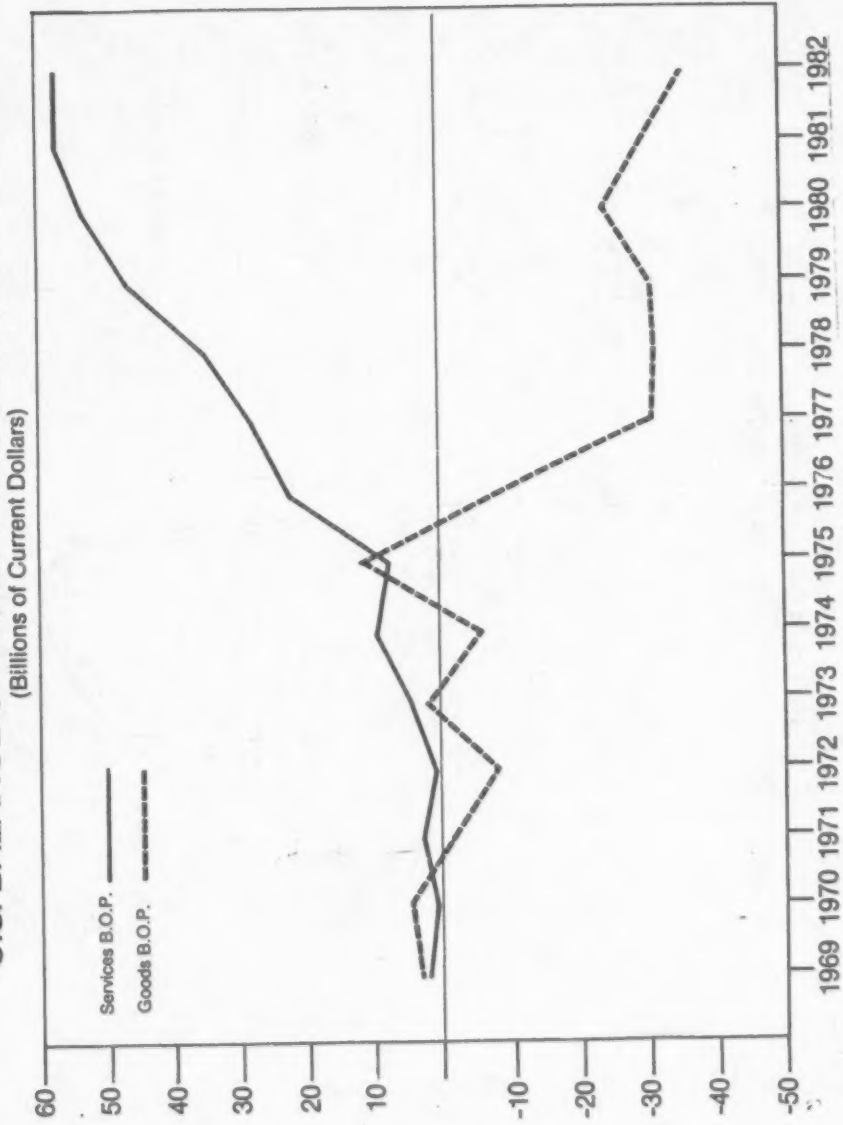
(BILLIONS OF CURRENT DOLLARS)



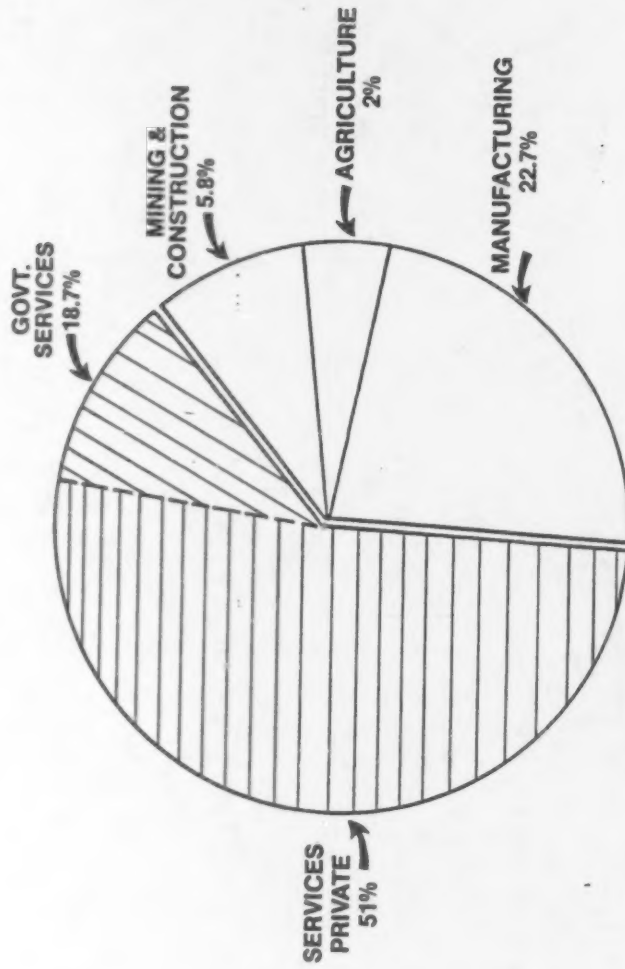
ALL SERVICES 66.6%
GOVERNMENT 11.5%

U.S. DEPT. OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS
SURVEY OF CURRENT BUSINESS

U.S. BALANCE OF TRADE IN GOODS & SERVICES



1981 DISTRIBUTION OF FULL TIME
EQUIVALENT EMPLOYEES AMONG INDUSTRIES



U.S. DEPT. OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS
SURVEY OF CURRENT BUSINESS, JULY 1982, TABLE 6.8B

Appendix C

PARTIAL LISTING OF FOREIGN BARRIERS TO U.S. SERVICE EXPORTS

Accounting.—Requirement that accounting services be performed by domestically trained accountants. (Brazil)

Prohibition on percentage of accounting firms owned by foreign nationals. (France)

Advertising.—Prohibition on use of radio and television commercials produced outside national territory. (Argentina, Australia, Canada)

Air Transport.—Discriminatory landing fees charged against foreign air carriers. (England)

Use of preferential user rates. (Chile)

Restrictions on access to national airlines' reservations systems. (West Germany and France)

Banking.—Limited foreign equity participation. (Australia and Venezuela)

Mandatory local incorporation of branches. (Nigeria)

Insurance.—Restrictions on operations of foreign insurance companies. (Korea and Japan)

Motion Pictures.—Restrictions on foreign film earnings. (France)

Prohibition on exhibiting imports if domestic films are available (Egypt)

Telecommunications and Information.—Restrictions on use of international leased lines. (West Germany)

Import duty on some telecommunications equipment. (Spain)

Restrictions on use of data links for teleprocessing systems. (Brazil)

FMC CORP.,

Washington, D.C., August 31, 1983.

Hon. SAM M. GIBBONS,
U.S. House of Representatives,
Washington, D.C.

DEAR SAM: I am writing on behalf of FMC Corp. to strongly urge that consideration be given to including the concept of protection for intellectual property rights under section 301 of the Trade Act in H.R. 1571.

As you know, Senator Danforth's S. 144 amends section 301 of the 1974 Trade Act to expand the definition of "unjustifiable" and "unreasonable" trade practices by other countries. This new definition would include the failure by other countries to provide adequate protection of intellectual property rights. This language though seemingly modest in scope, would go a long way to protecting American business abroad.

As you may know, Ambassador Brock has strongly supported this language and has told us that the intellectual property rights questions will be the "trade issue of the decade."

Therefore, I would be most appreciative if you and your colleagues on the Trade Subcommittee would adopt the same lan-

guage on intellectual property rights protection in H.R. 1571 as appears in S. 144.

Sincerely,

MICHAEL J. JOHNSON,
Director, International Affairs.

INSTITUTE FOR INTERNATIONAL ECONOMICS,
Washington, D.C., August 30, 1983.

Mr. JOHN J. SALMON,
*Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. SALMON: Per your release of August 5, which requested comments on the "Reciprocal Trade and Investment Act of 1983," enclosed are three copies of a study on this issue published by the Institute last November. The study did not address the current legislation specifically, nor in fact any particular proposal, but attempted to analyze the basic "reciprocity" approach in terms of its impact on the United States and the world trading system.

The basic conclusion of the study, as summarized on pages 35-37, is that it would be a serious mistake for the United States to adopt such an approach. The analysis shows that most possible outcomes under "reciprocity" would be adverse for the United States itself; see especially pages 21-30. Though we recognize that the current bill is different from the initial proposals of 1982, we would reach the same basic conclusion and counsel great caution in pursuing it.

Most importantly, however, we would hope that the Subcommittee would consider the methodology and analysis included in our study before coming to its final judgments on the issue. Bill Cline and/or I would of course be pleased to discuss any of this with the subcommittee further if it so desired.

Sincerely,

C. FRED BERGSTEN, *Director.*

[Editor's Note: The study referred to has been retained in the subcommittee files.]

INTERNATIONAL ECONOMIC POLICY ASSOCIATION,
Washington, D.C., September 2, 1983.

Hon. SAM M. GIBBONS,
*Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN GIBBONS: I set forth below our comments on H.R. 2848, the Service Industries Commerce Development Act of 1983, and H.R. 1571, the Reciprocal Trade and Investment Act of 1983. At the outset, I should like to note that we support the overall aims of both bills. Since 1968, we have been involved in the fight for greater recognition of the role of service industries as an important foreign exchange earner. In addition, we have always stressed the importance of U.S. investments as an integral link with trade and as a key component of our balance of payments earnings.

You may remember from our appearances before your subcommittee that IEPA is a nonprofit organization concentrating on international economic issues since 1957. We are supported by a select group of U.S. businesses interested in maintaining the good health of U.S. trade and investments in an open trading environment.

Regarding H.R. 2848, we believe that three specific areas need to be clarified. First, section 3(a)(2)(C) should be amended after the first full sentence ending in "(ii) when required under court order." by adding the following sentence: "When so required under court order, the court shall take those steps it deems necessary to maintain the confidentiality of trade secrets in such a manner as the court may deem necessary to conduct the business before it."

In addition, section 3(a)(2)(C)(i) should be amended to include after the word "thereof" and before the semicolon, the following new clause: "which Congress and committee thereof shall take whatever steps are deemed necessary by the Speaker of the House of Representatives, the President of the Senate, or the Chairman of the appropriate committee (as the case may be) to ensure the confidentiality of trade secrets and to ensure them from being publicly released."

Secondly, we do not believe that this legislation should contain sweeping authority for the Secretary to have unlimited subpoena and civil penalty powers. Thus sections 3(a)(2) (D) and (E) should be deleted. If the Congress believes enforcement powers are needed, section 6 of Public Law 94-472, the International Investment Survey Act of 1976 (IISA) should be substituted in its place. This enforcement section provides the same penalties for failure to supply information but proceeds first from a judicial compliance action. This was an acceptable enforcement section, agreed upon by both business, the executive, and the Congress in the development of the IISA and has been adequate in enabling the Government to obtain all of the necessary information required under that Act. We believe this is a better approach and urge the Congress to use the enforcement already set out in law rather than that which is now proposed in H.R. 2848.

Finally, there is not enforcement paragraph specifically set out to provide any penalties for a Government employee or consultant who improperly divulges information similar to that which is in law under section 5 of the IISA. We believe that (as Public Law 94-472 states) "No official or employee designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this act, may publish or make available to any other person any information collected. . . ." In addition as stated in the 1976 Act, we believe that "Any person who willfully violates [this proscription] shall, upon conviction, be fined not more than \$10,000 in addition to any other penalty imposed by law." These should be added to H.R. 2848.

We note that section 4 (Presidential authority) of H.R. 2848 is similar to section 4 of H.R. 1571 where it strengthens the hand of the President to act against discrimination of U.S. service industries. We believe that section 4 of H.R. 2848 could be deleted with the remainder substituting the language contained in H.R. 1571 (section 4) as preferable. Key differences are that H.R. 1571 is

broaden and mandates that the U.S. Trade Representative's Office be the review mechanism on complaints of unfair trade in service industries. This is similar to Trade Act complaints of unfair trade under the present section 301.

This Association also supports H.R. 1571. Without reciprocal markets being maintained for U.S. products, comparative advantage cannot operate as an important determinant in trade flows. When the world succumbs to "managed comparative advantage" through denial of reciprocity in trade, U.S. consumers suffer and U.S. employment is injured.

We are pleased to see that the Congress has finally recognized the importance of services and investments in U.S. international trade competitiveness. Since one-third of U.S. exports go to U.S. companies located abroad and services represent one of the largest earners of foreign exchange for the U.S. balance of payments, these two areas are integrally related to the health of the U.S. economy and the value of the U.S. dollar. We do believe, however, that one important component of investment should be specifically identified in this bill.

Section 5 of H.R. 1571 covers negotiating objectives which include restrictions on trade in services and restrictions on foreign direct investment with implications for trade in goods or services. We believe that the issue of remittance of income must be specifically identified in this legislation. A country can maintain no formal prohibition on the rights of establishment and be considered open on a nondiscriminatory basis to all foreign investors. However, where repatriation of profits is limited, the degree of restriction is tantamount to control of rights of establishment. Few investors would be likely to place their funds at risk in a country where they could not repatriate a fair amount of profits. The United States offers to foreign investors an unencumbered ability to remit profits and we should press for such equality of treatment for U.S. investors overseas. In addition, negotiating objectives should be broadened to include the free flow of capital which generally is adhered to by OECD nations through longstanding voluntary codes. Trade, investment, and free capital flows are all inseparable parts of international economic interdependence, and the smooth and fair functioning of international markets.

Thus, section 5(a)(2)(C) should be amended to include after the word "barriers," the following: "to remittance of income and". Section 5(c) should be amended so that its present section 104(b)(1) under the heading "Foreign Direct Investment" can be expanded to include at the end thereof the following: "And to reduce or eliminate barriers to the general free flow of capital; and". Similarly, the section under 104(a)(1)(B)(i) should be amended to read: "(i) Direct or indirect restrictions on the remittance of profits and on the transfer of information into or out of the country or instrumentality concerned, and".

We hope that these suggestions in response to your request for views are helpful to the subcommittee's work.

Sincerely,

RONALD L. DANIELIAN,
Executive Vice President and Treasurer.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., September 6, 1983.

Hon. SAM M. GIBBONS,
*Chairman, Subcommittee on Trade, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN GIBBONS: The Trade Subcommittee's press release No. 15 of August 5, 1983, invited those interested to write to the subcommittee regarding the pending "reciprocity" legislation (H.R. 1571 and other bills). As you know, the chairman of the NAM International Trade Policy Committee, Robert McLellan of FMC Corp., testified before your subcommittee last year in support of similar legislation (H.R. 6773 of the 97th Congress). A copy of that testimony is enclosed. [Editor's note: The statement has been retained in the subcommittee files.] My purpose here is to reaffirm NAM's support for the changes in U.S. trade law proposed in H.R. 1571 and S. 144 and to express the hope that the House will move expeditiously to translate these proposals into law.

The most significant change between July 26, 1982, when Mr. McLellan appeared before the subcommittee, and today is that things have got much worse. Last July the country was on its way to a record breaking trade deficit of nearly \$43 billion. This year the merchandise trade deficit could easily top \$70 billion. In short, the need for effective improvements in U.S. trade policy is greater and the rationale for legislation such as H.R. 1571 more compelling than it was a year ago.

If the passage of time has made the trade problem more intense, it has also made the tactical legislative issue more complicated. There are now several bills that deal with trade in services and other issues associated with H.R. 1571. Additionally, it is our understanding that you, Mr. Chairman, have become convinced that there is a need for changes in provisions of U.S. trade law not addressed in H.R. 1571 or S. 144, such as the antidumping and countervailing duty laws. We at NAM look forward with interest to seeing the draft trade law revision bill now being prepared by the Trade Subcommittee and would welcome the opportunity to comment on that legislation at the appropriate time. We hope, however, that this bill will be dealt with separately from H.R. 1571. Obviously, I cannot express NAM support for legislation that our members have not seen, especially when that legislation is likely to involve issues of considerable importance. Inevitably it will take time for a consensus to form around any new effort to reform U.S. trade law. Broad-based support for legislation such as H.R. 1571 or S. 144, however, exists now.

As we have said on other occasions, reciprocity legislation offers important improvements in U.S. trade policy. By requiring the responsible officials to catalog and assess the impact of foreign bar-

riers to U.S. trade, it should help to insure that Government effort and international political capital are spent where they can do the most good. Equally important, this legislation makes clear both to U.S. policymakers and to our trading partners what our priorities are for the next stage of international negotiations and stresses the value the United States attaches to improving the international trading rules as they apply to trade in services, investment with implications for trade, and the manner in which national and international policies affect trade in high technology products. Further, the new statutory definitions of "commerce" and other aspects of H.R. 1571 should give U.S. business added confidence that American trade interest will be protected. They should give our trading partners additional incentives for negotiating in the areas referred to.

Valuable as it now is, H.R. 1571 would, in our view, be improved by the changes listed below. All of these are now part of the Senate bill, S. 144, and so are familiar to those who have taken an interest in this subject: They are as follows:

(a) Expansion of the terms "unjustifiable" and "unreasonable" as used in section 301 of the Trade Act of 1974 so as to ensure that U.S. intellectual property rights are respected in international commerce;

(b) Inclusion of Presidential tariff negotiating authority with respect to these TSUSA items: 676.15; 676.30; 687.70; 687.74; 687.77; 687.81; and

(c) Provision for "fast track" legislation in accordance with the provisions of sections 102 and 151 of 1974 Trade Act in the event that such legislation is necessary to carry out the objectives of section 301 of the Trade Act as amended.

America's trade problem is an amalgam of the myriad factors of competitiveness. If one such factor stands out it is the serious misalignment of exchange rates. The complexity of the trade problem requires work in many areas at once. The gravity of it requires that Government act without delay where action is possible. H.R. 1571 offers such an opportunity. It is our hope that the Ways and Means Committee and the Congress will seize that opportunity in 1983.

Yours sincerely,

LAWRENCE A. FOX,
*Vice President, International
Economic Affairs Department.*

NATIONAL FOREIGN TRADE COUNCIL, INC.,
New York, N.Y., September 2, 1983.

HON. SAM M. GIBBONS,
*Chairman, Subcommittee on Trade,
Washington, D.C.*

DEAR CHAIRMAN GIBBONS: The National Foreign Trade Council appreciates the opportunity to respond to your request for written comments on H.R. 1571, the Reciprocal Trade and Investment Act of 1983, and H.R. 2848, the Service Industries Commerce Development Act of 1983.

The NFTC favors a free and open international trading system and opposes the view that the United States should follow many of its trading partners who are moving towards increased protectionism. Rather, this country should continue its current policy of expanding opportunities for trade and investment by seeking liberalization of foreign markets instead of raising barriers in our own markets. But we must become much tougher in protecting our trade rights from being undermined by the unfair and restrictive practices of other countries. To that end we must fully and aggressively utilize existing multilateral and domestic mechanisms to uphold U.S. trade rights, such as the General Agreement of Tariffs and Trade (GATT) and the section 301 authority of the 1974 Trade Act. And we should negotiate with our trading partners on a bilateral, as well as a multilateral basis, as is appropriate, to reduce barriers to trade and investment. The legislation under consideration is appropriately addressed both to actions by our own government needed to enhance trade and investment opportunities and to actions of foreign governments which may be inequitable and injurious to the U.S. economy and which involve a manipulation of the international trading system.

H.R. 1571

The Council strongly supports the provisions of H.R. 1571 as a reasonable approach towards some of our current trade and investment problems. The Council sees a particular need for the following elements of H.R. 1571:

(1) Clarification of the Trade Act of 1974 with regard to foreign direct investment and services.

Although we believe that services are already included in section 301, H.R. 1571 will remove doubts which might otherwise confuse policymakers and encourage protectionist barriers abroad. Extension of 301 to cover barriers to investment is important, since most investment barriers can have significant effect on international trade.

(2) Establishment of specific negotiating authority with respect to services, investment, and high technology. H.R. 1571 also contains a sense-of-Congress provision that the U.S. should negotiate or consult with foreign governments for the expansion and strengthening of the coverage of GATT codes and the dispute settlement process, for completion of agreements not concluded in the MTN, and for an international work program on barriers to trade in services, direct investment, and high technology products.

If we are to avoid retaliatory protectionist devices in the face of proliferating barriers abroad, there must be a mechanism for negotiating our differences. The authority contained in this provision would give U.S. trade officials credibility in seeking a mutual reduction of barriers and an expanded set of liberal principles governing international trade.

(3) Establishment of the right of the special trade representative to initiate petitions under section 302 of the Trade Act.

This right should improve the flexibility of the President to respond to unfair practices and increase the leverage of the trade ne-

gotiator by indicating how seriously the United States regards the unfair practice in question.

(4) Requirement that the USTR submit annual reports to Congress on trade barriers to U.S. exports of goods and services and to U.S. foreign direct investment.

These reports should be a valuable guide for policymakers and may, by themselves, make other governments more sensitive to trade distorting practices.

(5) Creation of a services industry development program to collect data and promote the competitiveness of U.S. service industries.

Before we can deal effectively with unfair practices facing U.S. services, we need to know much more about the actual role services play in our domestic economy and in U.S. trade and foreign investment. We also need to know more about our competitive position relative to other service exporting countries and about what non-tariff barriers exist, not only in other countries, but in our own. With such data in hand the Department of Commerce and the USTR could begin to accord U.S. services a higher priority in promoting U.S. exports and foreign investment in services.

H.R. 2848

The Council supports the general objectives of the Services Industries Commerce Development Act of 1983. Some provisions of H.R. 1571 are similar to those in H.R. 2848. However, there are a few important differences which we would like to mention.

The first difference relates to Presidential authority to respond to unfair trade practices. H.R. 2848 would establish a new set of standards and procedures for responding to unfair trade practices affecting services. In order to successfully pursue a policy of encouraging others to negotiate, rather than retaliate, it is important that our own actions not appear arbitrary or inconsistent with established U.S. practice. To do otherwise would cause erosion of the national treatment principle—our overall objective in the services area. We do not believe that it is desirable to create two different procedures to deal with unfair trade practices and therefore recommend that section 4 of H.R. 2848 be amended to conform with section 301 of the Trade Act of 1974, as amended.

We further recommend that the language "notwithstanding any other provision of the law" in section 4(a) be clarified and limited to allow flexibility of the President to use his authority to conduct trade policy in a manner consistent with the independent status of State and Federal regulatory bodies.

Secondly, H.R. 2848 confers subpoena authority upon the President to ensure compliance with data collection efforts. We wholeheartedly agree with the need to develop better information, but we wish to express our concern about the subpoena authority. It would lend a punitive air to what should be a cooperative public/private sector effort. We believe most companies will perceive it to be in their own best interest to supply as much of the required information as is reasonable and possible, and that withholding any information will be based on legitimate concerns.

Finally, I would like to reiterate the NFTC's concern that legislation aimed at improving the viability of U.S. trade laws and enhancing U.S. competitive interests not be used as a protectionist weapon. It makes little sense for the U.S. to imitate nations which consistently deviate from principles of fair trade and national treatment. Rather, we must continue our policy of aggressively persuading other countries to follow our examples. We believe that the legislation before the committee, with the caveats noted above, can help to achieve that purpose, and we would be most happy to work with your subcommittee to support its passage.

Very truly yours,

RICHARD W. ROBERTS, *President.*

Statement of

GOVERNOR JOHN SPELLMAN

Chairman

Committee on International Trade and Foreign Relations

National Governors' Association

Mr. Chairman and Members of the Subcommittee:

I am Governor John Spellman of the State of Washington. In my capacity as Chairman of the Committee on International Trade and Foreign Relations of the National Governors' Association, I am submitting these remarks and accompanying material in response to your request for comments on the bills H.R. 1571, the "Reciprocal Trade and Investment Act of 1983," and H.R. 2848, the "Service Industries Commerce Development Act of 1983."

By way of background, the Committee on International Trade and Foreign Relations was formed in 1978 in order to provide the nation's Governors with a permanent forum to discuss and influence international trade policy, and to assist them in developing and improving state trade programs. While state initiatives in trade promotion have taken a variety of forms, two generic policy areas have received major attention from the Governors — the reduction of barriers to exporting industries and firms, and the identification and expansion of foreign market opportunities for new-to-export enterprises.

Both H.R. 1571 and H.R. 2848 address these concerns directly, and represent welcome efforts to enhance America's trade performance while reforming current trade practices. The bills' sponsors are to be commended in particular for their recognition of the great potential which our service industries offer for improving our trade balance, and fostering employment and economic growth at home.

The enclosed NGA Policy Position on Trade in Services states the importance which Governors attach to expanded trade in services. Our concern is reinforced by the special role which states play as regulators of certain service activities. Coordinated policies by federal and state agencies will allow for optimal participation by the service industries in international markets, while preserving necessary levels of public safety and protection for our own and overseas consumers.

Let me now turn to specific features of each bill.

H.R. 1571

If H.R. 1571 succeeds in provoking a study of barriers to U.S. exports, as well as a report on factors affecting the competitiveness of U.S. high technology industries, it will have contributed greatly to the knowledge base upon which future trade negotiations must rely.

The only criticism of the Report on Competitiveness which I would make is that it should not be restricted to a focus on high technology. At the recent NGA annual meeting, our Committee's program session was devoted to the theme, "Enhancing International Competitiveness: State Roles and Strategies." Our guest speakers surveyed a broad range of factors affecting our competitive position in a variety of industries. While we applaud the wisdom of initiating such a report as called for in H.R. 1571, it is clear that our competitive posture in several fields of enterprise is critical to improving U.S. trade performance and overall economic growth. Therefore, I would urge the sponsors of this bill to consider the need for periodic reports on competitiveness factors affecting trade in other key industries and sectors as well.

The bill's amendments to Title III of the Trade Act of 1974 maintain Presidential discretion to tailor remedies to particular cases, and create a presumption in favor of discontinuing sanctions as soon as conditions permit. Given low present levels of U.S. imports of services, the option to restrict the access of foreign suppliers of services to U.S. markets may be of limited value in the near term. Nevertheless, such a sanction is useful as a means of demonstrating to our trading partners the seriousness which we attach to discriminatory treatment of American exporters of services.

Special appreciation is due for the bill's new Section 301(d)(3) which recognizes the unique role of the states in regulating certain services, by requiring federal consultation with appropriate state officers prior to the imposition of sanctions against foreign suppliers.

New Section 302(b)(2) extends to 75 days the time allowed for the U.S. Trade Representative to review a petition for relief and decide whether or not a formal investigation is warranted. Given the potential for injury to private parties during this additional 30-day period, and in order to expedite the overall grievance process, the time period for deciding on the need for an investigation should be retained at 45 days, except for the most serious extenuating circumstances. Questions unresolved within the initial 45-day period can be considered during the subsequent investigation.

With regard to the public hearing requirement, while a hearing during the initial review may be helpful in assessing whether the petition merits a formal investigation, a hearing during the subsequent investigation would appear to be necessary to ensure adequate fact finding, and provide ample opportunity for the full expression of opposing views on the merits of the petition. Thus, the hearing provisions of current Section 302(b)(2) should not be preempted in the event that a hearing was also held during the initial review stage.

New Section 304(a)(1) extends the time for reporting recommendations to the President based upon the USTR's investigation. This extension seems appropriate given the complexity of the issues, and the recognition that matters not fully under the purview of existing trade agreements are more difficult to process than those eligible for agreed-upon procedures for dispute resolution.

H.R. 1571 furthers the goal of improved U.S. trade in its specification of negotiating objectives, and its allocation of overall policy direction in services trade to the USTR, which has experience in monitoring this sector.

The creation of a special Service Industries Development Program will promote the competitiveness of this sector, expand trade opportunities for U.S. firms, and develop the necessary knowledge base for effective services trade initiatives in the future. However, the requirement that this important program be planned and developed with available Commerce Department funds, at a time of pressure for cutbacks in the International Trade Administration budget, raises the question of which existing federal trade activities will be curtailed to support the new program. Such allocation decisions should be made explicit, and only after consultation with the states and the private sector.

Section 6(c) on Coordination with States affirms the legitimate role of the states in national trade issues and the necessity of ongoing consultations among all levels of government in formulating and implementing U.S. trade policy. It is especially encouraging to see that U.S. territories are to be included in any non-Federal intergovernmental advisory groups created under Section 6(c)(2). This important segment of our citizenry should be explicitly included as well under the policy language of Section 6(c)(1).

H.R. 2848

Many of the admirable attributes of H.R. 1571 are also present in H.R. 2848. Specifically, the provisions of Section 3(a)(1)(D) and Section 3(b) calling for consultation with the states on implementation of the service industries development program, and the sharing of information and data bases on foreign commerce, will enhance state programs of trade and economic development.

The biennial report on the effects of government regulation on trade in services, established in Section 3(c), is a very worthwhile program. Such information is currently lacking, and precludes all government entities, but especially the states, from conducting a comprehensive assessment of the impact of the vast array of regulations on export of services. As we work to reduce barriers to our services exports abroad, we should give proper attention to the extent to which our own practices unreasonably constrain the international competitiveness of our dominant economic sector.

The sole recommendation I would make with respect to the biennial report is that Section 3(c)(4)(A) be amended to require the Secretary of Commerce to consult with the Office of the USTR prior to designating specific trading partners for study and analysis. The experience of the USTR's office in the services area would be of great value in such a determination.

A final concern regards the procedures and sanctions provisions of Section 4 on Presidential authority. It would seem that existing procedures under Title III of the Trade Act of 1974 are sufficient to address the concerns expressed in this bill. There is also the possibility of a two-forum system of adjudication under the bill, with the USTR handling petitions for redress concerning goods, but the Secretary of Commerce investigating complaints with respect to services.

Conclusion

These minor criticisms of H.R. 1571 and H.R. 2848 should not be viewed in any way as diminishing my high regard for their sponsors' outstanding efforts to fashion desperately needed reforms in our trade policies and structures.

Thank you for the opportunity to share with you the views of the Governors on these important trade questions.

NATIONAL GOVERNORS' ASSOCIATION
POLICY POSITION H-III

S. Trade in Services

During the last two decades, the United States has undergone a rapid transformation from an economy dominated by industry to an economy increasingly dominated by services. Today seven out of ten American jobs are in the service sector, and fully 67 percent of our gross national product is generated by services.

In the international market, the United States is the world's largest trader in services. In 1980, the U.S. achieved a surplus exceeding \$36 billion in services trade. Our services export total of \$60 billion exceeded the value of all food and consumer goods exports combined and amounted to nearly two-thirds of the value of capital equipment exports.

Unfortunately, the future growth of trade in services is clouded, primarily due to restrictive foreign government practices. At present, barriers to trade in services have not been subjected to international disciplines. Thus, the current efforts of the U.S. trade representative to place trade in services on the international negotiating table are extremely important to the future economic health of this country and deserve the support of all Americans.

The states obviously have a large stake in negotiations over trade in services. State trade promotion programs are placing an ever-increasing degree of emphasis on services exports, in keeping with the service sector's ever-increasing share of economic activity. Furthermore, states play a unique role in supervising and regulating many services domestically, especially in the banking and insurance area. Any international agreement on trade in services will to that extent affect state laws and policies directly.

Federal Action Suggested. The U.S. trade representative should continue to place a high priority on negotiating an international agreement which could lead to expansion of U.S. exports in services. While the federal government has exclusive constitutional power to conduct negotiations on trade in services, the importance of service negotiations to state economies and the special state regulatory role in some services should be taken into account by federal negotiators. A formal mechanism providing on-going, before-the-fact consultation between federal and state officials should be established.

State Action Suggested. Governors and other state officials should support and cooperate with USTR during international negotiations on trade in services, and should keep U.S. trade negotiators fully informed of the state regulatory role in affected services.

Private Sector Action Suggested. Service sector representatives should aid USTR in documenting foreign government restrictions on the export of U.S. services and should help educate the public on the pivotal role of services in our economy and the positive effect of expanded trade in services on our overall trade balance.

Adopted August 1980; revised February 1982 and August 1982.

STATEMENT OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

The Semiconductor Industry Association (SIA) submits these comments in support of H.R. 1571, "The Reciprocal Trade and Investment Act of 1983." SIA represents the majority of U.S. merchant and captive producers of semiconductors in matters of trade and Government policy. For a number of years, SIA has been active in seeking reform of the U.S. trade laws to offset the adverse effects of foreign industrial policies on U.S. high technology industries.

THE PROBLEM OF INDUSTRIAL TARGETING

In previous testimony before this subcommittee, SIA has outlined the problem which confronts the semiconductor industry as a result of the Japanese Government's program of comprehensive promotion of the semiconductor sector. Japan has enacted a succession of special laws authorizing the Japanese Ministry of International Trade and Industry (MITI) to develop detailed "elevation" plans for promoting specified strategic industries, including semiconductors. Pursuant to these enactments, extensive benefits have been extended to the Japanese semiconductor industry. The industry has received Government subsidies, low-interest loans, and tax benefits, and has been encouraged to form joint semiconductor research and development projects not challenged under Japan's antimonopoly law. A number of Japanese firms have received extensive free or low-cost R&D assistance from Japan's public telecommunications monopoly, Nippon Telephone & Telegraph (NTT), which operates the foremost electronics research laboratory in Japan. This aid has enabled Japanese firms to mount a major export drive in semiconductor memory devices. This export effort has been characterized by very aggressive pricing, and has severely injured a number of U.S. semiconductor firms.

An important aspect of the Japanese promotional program has been protection of the Japanese domestic market from U.S. semiconductor sales. The Japanese market was officially protected by import and investment restrictions until 1974-75; in addition, MITI jawboned Japanese semiconductor consumers to "buy national." The consuming firms had a natural incentive to do this anyway—the largest consumers of semiconductors in Japan are also the largest semiconductor producers. Thus, although Japan's formal import and investment barriers have been lifted, the U.S. share of Japanese domestic semiconductor sales is actually lower today—under 10 percent, compared with a U.S. share of the world market of 55 percent—than it was when the Japanese market was officially protected by quotas.

It is important to recognize that Japan's protected home market does more than simply deny sales and revenues to U.S. firms, although it certainly does that. Protection is integral to the process through which Japan nurtures its competitive capability in key product areas. Protection assures Japanese firms a secure source of demand early in a product life cycle, enabling them to build production volume—reducing their unit costs of production—without fear of significant foreign competition. This sets the stage for a subsequent export drive by Japanese firms who have been able to

lower their costs substantially through volume production for the protected home market.

The U.S. trade laws, as currently drafted, have not enabled the U.S. Government to mount an effective response to this type of targeting program. That is why H.R. 1571, pending before this subcommittee, has such potential significance.

H.R. 1571 SHOULD BE ENACTED

H.R. 1571 would make a number of changes in the U.S. trade laws which are necessary if this country is to come to grips with the problem posed by foreign industrial policies. Other legislative changes supported by SIA—such as antitrust and copyright reform—will also be needed.

Most importantly, H.R. 1571 contains a mandate to U.S. negotiators to seek the elimination of barriers to trade in high technology products (section 5). U.S. negotiators are given a detailed set of objectives to be sought in high technology sectors, including the elimination of barriers to U.S. high technology exports, elimination of the trade distorting effects of foreign industrial policies, elimination of discriminatory procurement by foreign governments, and the opening of joint R&D projects to the firms of all nations.

This provision is particularly important because the United States is most likely to offset the effects of targeting through the conclusion of bilateral agreements with the nations whose practices have proven harmful. In semiconductors, for example, some very encouraging initial progress has recently been made through the persistent efforts of U.S. negotiators in the United States-Japan Work Group on High Technology Industries (HTWG). Such negotiating efforts, however, inevitably tend to lose focus over time in the absence of an underlying statutory mandate. H.R. 1571 would provide a permanent statutory foundation for an ongoing U.S. Government involvement in high technology trade problems, and would enable the Government more readily to justify the sustained commitment of time, manpower and resources needed to keep the pressure on Japan in this critical trade area.

H.R. 1571's mandate to secure the elimination of barriers to U.S. exports is particularly important. SIA's primary trade objective with respect to Japan is the elimination of barriers to U.S. semiconductor sales in Japan. SIA believes that if U.S. semiconductor firms can secure full and equal access to the Japanese domestic semiconductor market, the Japanese targeting program will lose much of its effectiveness. This statutory language will reinforce the efforts of U.S. negotiators to secure the opening of the Japanese market to U.S. products.

H.R. 1571 also strengthens the statutory tools available to the executive branch for taking direct action against unreasonable foreign practices in the event negotiations do not produce concrete results (section 4). Under this legislation, the U.S. Trade Representative would be authorized to self-initiate a section 301 investigation, and to delay consultations with a foreign government up to 90 days. In evaluating section 301 trade problems, the President is directed to take into account the impact of any action taken under section 301 on the national economy, including employment, infla-

tion, industry rationalization, and consumer costs. These provisions enhance the prospect of decisive executive branch action in those instances when the U.S. is confronted with patently unreasonable conduct by a foreign industry or government. While we believe that the sources of high technology trade friction between the U.S. and Japan be resolved within the framework of bilateral negotiations such as those under way in the High Technology Work Group, it is important that the U.S. Government demonstrate its willingness to act to protect the interests of its industries in the event that such a resolution of differences cannot in fact be achieved. This new legislation offers an opportunity to send a signal that the U.S. will be prepared to act—if necessary, unilaterally—to restore conditions of fair competition.

Finally, H.R. 1571 provides for the gathering of needed data on foreign industrial practices and their effects on U.S. industries. The bill directs the Executive to report to Congress analyzing factors which significantly affect the competitiveness of U.S. high technology industries (section 3). This section provides the basis for continuing congressional oversight of high technology trade problems—enabling the Congress to ensure that the negotiating mandate contained in section 5 is actually being carried out. In the context of our relations with Japan, for example, this provision would help Congress monitor Japanese adherence to the commitments made in bilateral agreements. This oversight provision will keep the Congress informed, on a continuing basis, and may identify areas where new legislation is needed.

TARIFF NEGOTIATING AUTHORITY

The elimination of tariffs in semiconductors and the creation of a worldwide tariff-free environment for semiconductor trade has been an important objective of the U.S. semiconductor industry. For this reason, SIA supports inclusion in H.R. 1571 of authority to authorize the President to reduce or eliminate tariffs on semiconductors. The Trade Subcommittee has already reported favorably such a provision when it considered H.R. 1953 in the context of the miscellaneous tariff bill. A similar provision is also part of the S. 144, the Senate companion bill to H.R. 1571.

At SIA's urging, the tariff elimination issue has been under active consideration by both the U.S. and Japanese Governments. There is reason to believe that an understanding will be reached between the two governments as early as this year to allow the elimination of semiconductor tariffs on a mutual and reciprocal basis.

CONCLUSION

The U.S. high technology industries, upon which this country's economic future may well rest, face a formidable challenge from foreign industrial promotional policies. Enactment of H.R. 1571 would be one important step toward meeting that challenge—it would lay the foundation for a permanent, ongoing U.S. Government effort to secure and maintain conditions of fair competition

in the high technology industries. SIA therefore strongly supports the passage of this bill.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 6, 1983.

HON. SAM GIBBONS,
*Chairman, Subcommittee on Trade,
Committee on Ways and Means, Washington, D.C.*

DEAR MR. CHAIRMAN: As per your press release #15, I would appreciate the opportunity to comment on H.R. 1571 and H.R. 2848.

On the "Reciprocal Trade and Investment Act of 1983" (H.R. 1571), I urge that the committee include specific tariff negotiating authority in the high-technology sectors. These sectors could be either left to the determination of the USTR after consultation with its advisory groups (by a date certain), or the subcommittee could spell out several sectors—for example, the semiconductor and computer sectors as spelled out in legislation previously passed by the Senate. Such an approach could include the provisions of H.R. 1953, as previously amended by your subcommittee.

The specific addition of tariff negotiating authority in the high-technology sector is necessary, I believe, to fulfill the purpose (as I understand it) of section 104A(c)(2) which states that the principal U.S. negotiating objectives in high technology should be "to reduce or to eliminate *all* barriers" to trade in these products (emphasis added). Yet the section and other sections do not seem to spell out a *tariff-negotiating* authority.

High technology trade remains America's best export hope, and we should provide the President with a full-range of tools to exploit our advantages in this sector.

On a second point, relative to H.R. 2848, the idea of making the Department of Commerce lead agency in services trade efforts gives me a sinking, leaden feeling—services trade is a dynamic sector and should be handled by the USTR, which can at least move dynamically.

Thank you for your consideration of these comments.

Sincerely,

FORTNEY H. (PETE) STARK,
Member of Congress.

STATEMENT OF THE UNITED STATES COUNCIL FOR INTERNATIONAL
BUSINESS

The United States Council for International Business, a policy-making organization representing its 250 corporate members on international trade and investment issues, is pleased to present its views on the latest proposals for services and reciprocity legislation. These issues have been considered by this committee in numerous proposals to expand foreign market opportunities for U.S. investment, high technology goods, and services. Both of the bills currently under consideration, H.R. 1571, the "Reciprocal Trade and Investment Act of 1983" and H.R. 2848, the "Service Industries

Commerce Development Act of 1983," represent a growing consensus that present legislation inadequately addresses the problem of foreign barriers to U.S. investment, services, and high tech exports.

As the U.S. affiliate of the International Chamber of Commerce—a global business federation with 7,000 companies in 108 countries—we believe that the ultimate objective of any trade legislation should be to strike a judicious balance between a results-oriented assertion of our rights, and the maintenance of our international obligations under the GATT. As such, we endorse H.R. 1571 and H.R. 2848 as they are seen to:

Have as their principal focus trade expansion, not trade constriction:

Provide a clear mandate for the President to negotiate services and investment issues in multilateral negotiations;

Be consistent with out international obligations under the GATT;

Be nondiscriminatory and not directed against specific products, sectors, or countries.

It is within this context that we should like to set out some general principles which might govern consideration of this legislation.

INTRODUCTION

America must do more to expand its access to market opportunities overseas. This important objective deserves more than piecemeal attention by the administration, the Congress, and the public. With exports accounting for over 5 million jobs last year, international trade is simply too important to ignore. Positive action is now needed to insure equitable market opportunities for U.S. businessmen. As foreign markets have become important to our own domestic health, so have instances of government intervention increased. The trend of the last two decades has been for governments to deal with a variety of domestic economic problems through unilateral import restrictions, performance requirements, or government subsidies. This is particularly troublesome for the investment and service sectors, as they fall outside the purview of normal trade rules and are less susceptible to international scrutiny.

Examples abound where U.S. Council members have been made to suffer by discriminatory trade practices. This has long been problematic in trade relations with developing states, but is today not limited to LDC's. Major industrialized states like Japan, Canada, and the European Community have adopted discriminatory policies that hinder U.S. exporters. Even in those sectors where the United States enjoys a comparative advantage, U.S. investments are being discouraged by restrictive laws which clearly discriminate against U.S. traders. Reciprocitarians argue that our Government must retaliate against others' restrictive practices with like measures of our own. The U.S. Council has deep reservations about this negative approach to reciprocity. They are as follows:

1. A misapplication of the reciprocity principle could worsen U.S. trade by undermining an already vulnerable multilateral trading system

Legislation that would require bilateral, sectoral, or product-by-product balancing is a threat to the international trading system. Experience suggests that "mirror image" reciprocity is not only dangerous but unworkable. Its trust is protectionist and retaliatory, and the emphasis is on unilateral enforcement, not multilateral cooperation. This style of reciprocity assumes that the trade and investment opportunities offered by the United States have been greater than those we have been afforded, and that current enforcement tools are inadequate to correct the imbalance. Its focus is on closing U.S. markets to any country which does not offer exactly equal opportunity in individual sectors, rather than on achieving equivalent trade concessions across a broad spectrum of products and sectors.

We are concerned that a distorted concept of reciprocity might emerge to include virtually every form of protectionism: important restraints, domestic content requirements, offsetting tariffs and quotas, government subsidies, and other trade constricting mechanisms. All of these measures are practiced by other governments, and might be urged upon our own as part of the reciprocity impetus. In fact, any aggrieved industry could plead its case and hope for relief under this distorted version of reciprocity.

The President should have the authority to respond swiftly and forcibly to discriminatory trade practices, but we should not allow concern over bilateral trade imbalances in few sectors undermine the system on which our success as a trading nation has been built. We may want a more reciprocal relationship with Japan, where last year we suffered a deficit of some \$24 billion; but should that also be the case with the Europeans, where we have enjoyed a trade surplus nearly every year since the European Community was founded in 1958? Clearly, a broader interpretation of the reciprocity principle is required.

2. U.S. interests are best served through multilateral bargaining

What is needed is a comprehensive approach to trade policy which seeks to ensure foreign market opportunities in a GATT-compatible way. Positive legislation to remove export disincentives will be more effective in enhancing our international competitiveness than new punitive reciprocity legislation. In this regard, we have testified in hearings to amend ambiguities in the FCPA, and increase financing for the Eximbank, as well as in hearings which considered proposals for reorganizing the trade bureaucracy.

The U.S. Council is prepared to support any legislation that strengthens the principle of nondiscriminatory most-favored-nation treatment, under which a concession granted to one trading partner must be granted to all. By this arrangement, the aggregate benefits derived by each party are roughly equal to the concessions given by any other. We would agree that our goal should be to ensure equivalent market access by moving our trading partners to a level of market openness closer to our own. This is best accomplished through multilateral persuasion, not unilateral trade re-

strictions. Both of the bills under consideration seek market expansion within this multilateral framework.

3. Reciprocity is high risk business

If we breach our own GATT obligations as others have done, we invite certain retaliation. The United States has long been the world's free trade spokesman, and we risk general erosion of the system if we abandon this important role by succumbing to protectionist pressures. Our objective should be to test and strengthen the GATT. This is only possible with U.S. support. Adopting retaliatory trade restrictions does not lend itself to this end. The scope of foreign retaliation cannot be foreseen, but it is certain that our trading partners will be forced by affected industry interests to take unilateral action in response to our provocations. What is more, this retaliatory action may not be limited to the product which was the target of our restrictions.

Last spring's textile dispute with China shows how foreign retaliation can be directed against an unrelated industry. After failing to reach agreement on a new textiles agreement, U.S. officials unilaterally restricted imports of 32 Chinese apparel and textile items. The Chinese then banned all purchases of U.S. cotton, soybeans, and synthetic fibers. Peking officials hinted that China might also reduce imports of U.S. corn, timber and wheat (China is the No. 1 importer of U.S. wheat). Here is a casebook example where temporary relief to one sector is gained at the expense of another economically vital and unrelated sector. Clearly, once reciprocity is set in motion we can have no control over which sectors might be the target of foreign retaliation.

Bearing in mind the above reservations about the reciprocity concept, the U.S. Council for International Business is prepared to support legislation which meets the following criteria:

(1) *New legislation must strengthen existing law by clarifying coverage for investment and trade in services under the Trade Act of 1974.* One of the most important provisions of H.R. 1571, the "Reciprocal Trade and Investment Act of 1983," is its clarification of coverage for trade in services in U.S. trade law. While we believe that section 301 of the 1974 Trade Act is intended to address subsidies and unfair pricing in the service sector, questions have been raised about executive branch willingness to apply this authority. H.R. 1571 erases any ambiguity by making it clear that the unfair trade practices provision, section 301, covers services and investment. The President would not only have a clear mandate from Congress for specific negotiating objectives on services, but the wherewithal to realize those objectives under present negotiating authority.

Questions have been raised about the adequacy of present law in protecting U.S. investors abroad. We submit that H.R. 1571 addresses this perceived shortcoming. Vigorous initiation of section 301 provisions would meet the following objectives:

(a) Put political and legal pressure on the offending government to end its discriminatory trade practices. The threat of retaliatory actions might encourage a favorable response.

(b) It would demonstrate that the U.S. Government is committed to ensuring equivalent market access by actually implementing retaliatory action.

(c) It would reduce protectionist pressures upon the Congress by demonstrating the effectiveness of the current mechanism.

All of these objectives could be met by clarification and implementation of section 301 of the Trade Act of 1974, as amended.

(2) *Services and investment should be brought under the same liberal trading framework as goods.* American service industries encounter a formidable array of barriers in both developed and developing countries. This is in part because U.S. trade law with respect to services is incomplete, and also because services has only recently emerged as an integral part of our economy. H.R. 2848, the "Service Industries Commerce Development Act," gives negotiating priority to service sector issues, and establishes within the Commerce Department a service industries development program. If we expect to generate a consensus among our trading partners on the need to bring services and investment issues under the same discipline as the goods trade, then we must first get our own house in order. This means establishing priorities, gathering data, and analyzing the impact of the services trade on our economy.

Unlike the goods trade there is no agreed set of rules for international trade in services. An important objective of U.S. trade policy, and one that will be greatly aided by enactment of H.R. 2838, is to extend the multilateral discipline that has governed the goods trade for nearly 35 years to trade in services as well.

(3) *New legislation should not be enforced by independent Federal agencies without specific supervision and control by the President.* The U.S. Trade Representative's Office should be the lead agency in formulating and negotiating all U.S. trade policy, including services and investment policy. Independent agencies may, under certain circumstances have a constructive role to play in helping to assess the impact of foreign trade and investment barriers, but these agencies are not responsible for discerning the broad implications of their actions on U.S. foreign economic policy. This could lead to unjustified actions which violate U.S. international obligations, undermine bilateral negotiations, or send the false signal that the U.S. no longer adhered to GATT principles.

Mirror-image legislation which would require a particular agency to retaliate against trade or investment restrictions would create confusion, and compound our problems by precluding consideration of other political factors which necessarily bear upon any public policy decision.

CONCLUSION

The maintenance and expansion of market opportunities abroad for U.S. export of goods, services, and investment is a critical objective of U.S. foreign economic policy. The two bills under consideration were designed to liberalize international trade and curb protectionist pressure in the United States by demonstrating that we will enforce our rights under international agreements. Further, the bills specifically extend coverage of these rights to include services and investment. We are prepared to support these bills insofar

as they build on the GATT concept of reciprocity, and we hope that their enactment will lead to further export of U.S. services and investment.

STATEMENT OF DAVID J. STEINBERG, PRESIDENT, U.S. COUNCIL FOR
AN OPEN WORLD ECONOMY, INC.

(The U.S. Council for an Open World Economy is a private, non-profit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The council does not act on behalf of any private interest.)

I applaud the emphasis placed by the administration and many Members of Congress, including the sponsors of H.R. 1571, on the need for other countries, especially the most economically advanced, to remove barriers that unfairly obstruct access to those markets for U.S. goods, services and investment. However, neither the administration's trade-policy agenda nor any of the trade bills that have been introduced in Congress adequately address the Nation's needs in this regard. H.R. 1571 (The Reciprocal Trade and Investment Act of 1983) is currently the centerpiece of efforts in the House of Representatives to deal with this question. The bill's major provisions include encouragement for more forceful U.S. action against unfair foreign barriers against American exports, and bringing services and investment within the scope of the President's authority to retaliate against unfair foreign practices deemed harmful to our country's international commercial interests. The bill would authorize negotiations to secure fair, open access abroad for U.S. services and investment, and for U.S. high-technology products per se.

Such legislation may strengthen political will for seeking equity for American goods, services and investment in foreign markets. But it tends more toward retaliation against allegedly unfair impediments—as a device to get these barriers removed, though possibly counterproductive—than toward steady, substantial progress toward freer, fairer international commerce on a truly reciprocal basis. Nor are the provisions for securing fair treatment abroad for U.S. services and capital likely to produce substantial benefits for the United States without a comprehensive free-trade initiative (not now on our national agenda) embracing all forms of international business and involving trade-offs across the lines of all these sectors. The highly touted effort to achieve reciprocally lower barriers to trade in high-technology products suffers similar inadequacy.

The support which this bill has received from the administration and from much of the "liberal trade" community seems based on absence of a more far-reaching strategy and on relief that the protectionist dangers in previous versions of this kind of bill have been lessened. There is the hope that such legislation might defuse attempts at blatantly protectionist measures. If nongovernment supporters of this kind of legislation (including the Business Roundtable, the National Association of Manufacturers, the Chamber of Commerce of the United States, and the Emergency Committee for

American Trade) see this bill as projecting an adequate trade strategy for the 1980's, such a stance corroborates the serious inadequacies I detect in the liberal-trade movement. Whether or not they support such legislation, other liberal-trade organizations (e.g., those representing importers, retailers and consumers) are themselves delinquent in their grasp of the foreign-economic and domestic-economic strategies that should top our national agenda in this policy area. If, as the U.S. Trade Representative has said, this is the most difficult time we have faced in international trade policy since World War II, then this is a time for much more than the administration is seeking, than anyone in Congress is seeking, indeed more than the liberal-trade community (almost without exception) is seeking, to address this critical problem.

The administration has no strategy for steady, far-reaching progress toward a truly open world economy. It has a loudly proclaimed free-trade stance, but not a free-trade strategy. Its plans fall far short of the dramatic initiative needed to save the world economy from the deeper protectionist pitfalls into which it may slip during this perilous period for all countries. The other contracting parties of the General Agreement on Tariffs and Trade may not be ready for anything more than "work programs" on longer-term issues and reviewing implementation of the fair-practice codes negotiated in the Tokyo round. But the United States should not lower its sights to the lowest common denominator.

H.R. 1571 does not raise the world's sights, or our own, high enough. It is not even well-calculated to advance the limited goals for which the bill is designed. The United States needs to raise its own sights and those of the world to the need to seek, with deliberate speed, the freest and fairest international economic system—indeed *optimum* reciprocity through negotiation of a free-trade charter (embracing goods, services, investment, etc.) with as many industrialized countries as wish to join us in this venture. There would have to be special privileges and commitments for underdeveloped countries in their relations with the free-trade area created by the charter. Once one or more advanced countries negotiated such an agreement with the United States, all would do so sooner or later.

PROGRESSIVE, NOT REGRESSIVE, RECIPROCITY

While much more can and should be done to advance the cause of true reciprocity in the sense so assiduously nurtured, with such rewarding results, in the last half-century, the least we can and should do is resist a revisionist redefinition of reciprocity—one that would set in motion bilateral, trade-restrictive reactions (and counter-reactions) to the alleged failure of certain countries to permit U.S. access to their markets substantially equivalent to their access to the U.S. market. This concept of reciprocity, while possibly inducing some liberalization in certain cases, runs the general danger of ratcheting import barriers higher not lower, and the level of world trade lower not higher. The U.S. economy could hardly benefit from bilateral reciprocity maneuvers that (a) sock American consumers, (b) sacrifice import-dependent and export-dependent American jobs in the wake of retaliatory or emulative re-

action abroad to U.S. import-restricting tactics, and (c) suppress the beneficial effects of freer imports on U.S. productivity and overall competitiveness. Such results would do little to "foster the economic growth of, and full employment in, the United States" (a prime objective of H.R. 1571).

The champions of "reciprocity" should want reciprocity in its finest sense. If so, totally free trade on the part of the industrialized countries, fused with totally fair trade (including rules for ensuring fair exchange rates), should be the length and breadth of their perspective. If indeed the objective of reciprocity is fairness, attention should be given to the fact that the most far-reaching progress toward totally fair trade will not be achieved unless impelled, in fact compelled, by negotiated removal of all impediments to international commerce in accordance with a realistic timetable (with permission for strictly controlled departures from the timetable to help cope with unforeseen emergencies). No reciprocity bill now in Congress could possibly ensure significant progress toward this concept of optimum reciprocity and consummate fairness in international commercial relations.

Congressman Jones of Oklahoma (a cosponsor of H.R. 1571) has said that "to maintain the credibility of worldwide free trade, the United States must earnestly pursue the elimination" of foreign barriers to U.S. goods and services. It is our Council's view that, to move effectively toward this objective, the United States should invite the other economically advanced countries to join us in negotiating a charter that, at long last, programs totally free and totally fair international trade. There will not be a contract for completely fair international commerce without a contract for completely free international commerce, and vice versa.

Supporters of this kind of legislation say it is needed—spurring retaliation against substantial and unfair barriers to U.S. access to foreign markets—because U.S. import concessions have not been reciprocated by our major trading partners, putting us in a weak position to bargain for needed concessions abroad inasmuch as there are few U.S. import concessions left with which to bargain. The remedy proposed in this bill, reviving a risky ploy I heard advocated decades ago, would not achieve the reciprocal, equitable market access the supporters of such legislation say is their aim. It would be more likely to ratchet barriers upward and muddy the channels of international discourse on how to achieve truly reciprocal, increasingly freer international commerce.

The sponsors of such legislation say it would strengthen the President's hand in responding to unfair barriers to U.S. exports and other business abroad. However, notwithstanding their contention that executive action under this legislation would be discretionary with the President ("the bill strengthens the President's hand without forcing it"), the revisionist conception of reciprocity (if it can be reconciled with existing U.S. trade agreements and if in fact it is meant to be enforced) would engender political pressures and government actions harmful to the objective of freer and fairer international economic relations.

How is bilateral reciprocity to be measured? By what standards, and whose standards? Is each country free to decide reciprocity, an act on this assessment, in any way it chooses? What assurance can

there be, and how enforced, that whatever standards are used will be applied indiscriminately and with equal intensity to all countries? Instead of forcing the issue of equity in trade relations as the bill proposes, might we not shoot ourselves in the foot, or worse? If negotiation of the free-trade charter I am advocating, and the optimum in multilateral reciprocity which this would engender, seems a fanciful, formidable undertaking fraught with unlimited complexities, how much less formidable, more manageable and more helpful would be a train of trade-restrictive actions and reactions under the rubric of bilateral reciprocity projected by bills like H.R. 1571?

CONCLUSION

There are parts of H.R. 1571 that merit support. These include authorization for negotiations to achieve equitable access to foreign markets for U.S. services, investment and high-technology business per se, although substantial progress toward such access is not likely outside the framework of a free-trade charter embracing all forms of international commerce. I shall not allow my advocacy of the strategy proposed in this statement to deter my support for measures less ambitious. Half a loaf may be better than none at all. However, I have reached the conclusion that H.R. 1571 is conceptually not acceptable as even half a loaf.

Besides encouraging political pressures and executive and legislative maneuvers that seem likely, on balance, to increase trade restrictions, and besides its shortcomings with respect to the new negotiations it authorizes, such legislation—setting the tone and the scope of U.S. trade policy for many years to come—would divert the energies of government from what urgently needs to be sought in this major policy area. The United States needs to get tough in trade policy, but in a way that reveals toughmindedness about the objective at which this nation and the world economy should aim and how to make it politically palatable at home and abroad. Without a dramatic strategy of such proportions, the danger of slippage into deeper protectionism is considerable.

If Congress insists on passing the likes of H.R. 1571, I urge at least the following amendment: that, in estimating the trade-distorting impact on U.S. commerce of foreign policies or practices impeding American business, and in retaliating against such barriers or proposing legislation to counter them, the President should be required to assess the cost to the Nation of any such countervailing action and make such estimates public.

As for H.R. 2848 (the Service Industries Commerce Development Act of 1983), I regard this proposed instrument for expanding the international trade of the Nation's service industries to be inadequate at best. It could in fact be a device that, in the name of "reciprocity," could result in higher barriers to international trade in services, both for U.S. companies and those of other countries. Proposed analysis of international competition in services (a task the bill assigns to the Department of Commerce) is all to the good. But proposed use of the Secretary of Commerce's report to the President and Congress on this subject as "the basis for action by the President to limit eligibility of foreign suppliers to engage in interstate commerce in the United States" (quotation from the Sub-

committee on Trade press release of August 5, 1983) could conceivably result in ratcheting service-trade barriers upward and, in the process, damage the international climate for negotiating freer access to world markets in other sectors of international business. As suggested earlier in this statement, progress toward removing barriers on services is not likely in the absence of a comprehensive strategy to program the removal of all barriers to all kinds of international business dealings, initially on the part of the world's most advanced countries.

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